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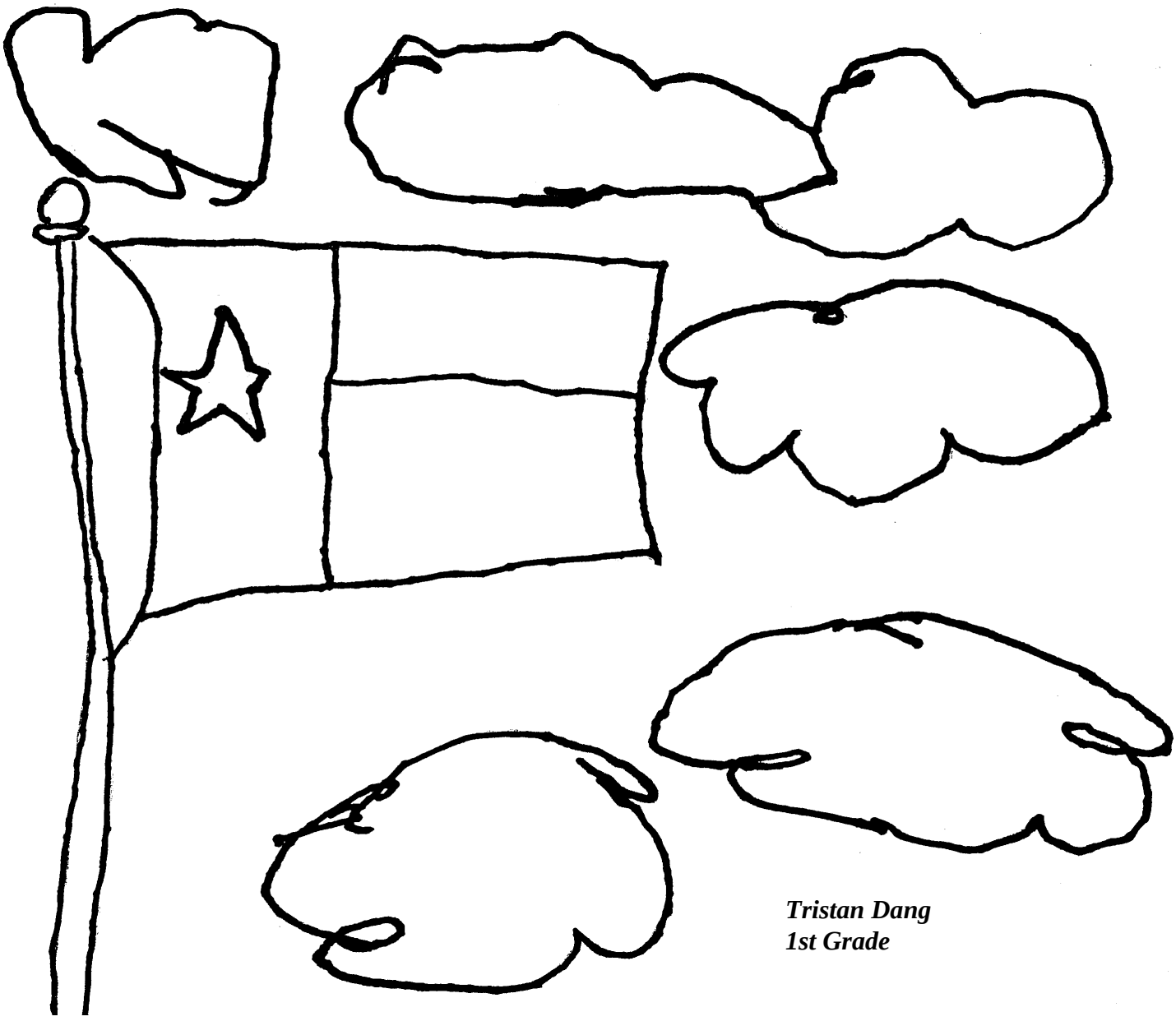

Tristan Dang
1st Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. 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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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GOVERNOR

ATTORNEY GENERAL

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WITHDRAWN RULES

ADOPTED RULES

North Central Texas Council of Governments

Texas Department of Protective and Regulatory Services

Public Utility Commission of Texas

Texas Rehabilitation Commission

Stephen F. Austin State University

Texas A&M University, Board of Regents

Texas Department of Transportation

THE GOVERNOR

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

Appointments

Appointments for August 30, 2002

Appointed as the Criminal District Attorney of Deaf Smith County, effective September 1, 2002, for a term until the next General Election and until his successor shall be duly elected and qualified, James Michael English of Hereford. Mr. English will replace Roland Saul, who was elevated to Judge of the 222nd Judicial District Court.

Appointed as Judge of the 222nd Judicial District Court, Deaf Smith and Oldham Counties, effective September 1, 2002, for a term until the next General Election and until his successor shall be duly elected and qualified, Roland Saul of Hereford. Mr. Saul will replace Judge David Gulley who resigned effective at 11:59 p.m. on August 31, 2002.

Appointed as Judge of the 330th Judicial District Court in Dallas County, effective September 1, 2002, for a term until the next General Election and until her successor shall be duly elected and qualified, Marilea Whatley Lewis of Dallas. Lewis will replace Judge Theo Bedard who will retire effective August 31, 2002.

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for terms to expire on August 31, 2007, Charlene Evans of Harlingen, (reappointed), Davie Lee Wright Johnson of El Paso (replacing Johnnie Elliott of Brownwood whose term expired).

Appointed to the Capital Area Regional Review Committee for terms to expire on January 1, 2004, Judge J. P. Dodgen of Llano (replacing Todd Baxter who no longer qualifies), Judge John C. Doerfler of Georgetown (replacing John Allred who no longer qualifies), Mayor Gary Hopkins of Johnson City (replacing Jimmy Mathison who no longer qualifies), Mayor Bob Young of Cedar Park (replacing Cynthia Long who no longer qualifies).

Appointed to the Health Care Information Council for a term to expire on September 1, 2005, Steven Michael Berkowitz, M.D. of Austin (replacing Ruben Martinez of Harlingen who resigned).

Appointed to the Texas Judicial Council for terms to expired on June 30, 2007, Lance Richard Byrd of Dallas (replacing James Brickman of Dallas whose term expired), Delia Elisa Martinez-Carian of San Antonio (reappointed).

Designated as presiding officer of the Texas Juvenile Probation Commission for a term at the pleasure of the Governor, Judge Robert P. Brotherton of Wichita Falls. Judge Brotherton is being reappointed as chair.

Appointed to the Texas Juvenile Probation Commission for terms to expire on August 31, 2007, Judge Robert P. Brotherton of Wichita Falls (reappointed), Keith H. Kuttler of College Station (reappointed), Barbara J. Punch of Missouri City (replacing Byron Reed whose term expired).

Appointed to the Texas Rehabilitation Commission for a term to expire on August 31, 2005, Lance L. Goetz, M.D. of Dallas (replacing Jerry Kane of Corpus Christi whose term expired).

Appointed to the North Texas Tollway Authority for a term to expire on August 31, 2003, Marilyn Kay Walls of Cleburne (reappointed).

Appointments for September 6, 2002

Appointed as Justice of the Supreme Court of Texas, effective September 7, 2002, for a term until the next General Election and until his successor shall be duly elected and qualified, Justice Michael Haygood Schneider, First Court of Appeals of Houston. Justice Schneider will replace Justice James A. Baker, who resigned effective Saturday, August 31, 2002.

Appointed to the Emergency Medical Services Advisory Committee for a term to expire on January 1, 2006, Shirley Scholz of Ransom Canyon (replacing Lance Gutierrez of Addison who is no longer eligible to serve).

Appointed to the Emergency Medical Services Advisory Committee for terms to expire on January 1, 2008, Gary D. Cheek of Clyde (reappointed), Kris J. Gillespie of Austin (replacing Pattilou Dwakins of Amarillo whose term expired), Frederick N. Hagedorn, M.D. of Lubbock (reappointed), Arlene N. Marshall of Port Lavaca (reappointed), Ronald M. Stewart, M.D. of San Antonio, (reappointed).

Appointed to the State Board of Examiners for Speech Language Pathology and Audiology for terms to expire on August 31, 2007, Rosario Rodgriguez Brusniak of Plano (replacing Elsa Cardenas-Hagen of Brownsville whose term expired), Matthew Houston Lyon of El Paso (reappointd), Minnette Son, M.D. of San Antonio (replacing Harvey Komet who is deceased).

Appointed to the Texas Veterans Commission for a term to expire on December 31, 2007, Hector Farias of Weslaco (replacing Alexander Vernon of Killeen whose term expired).

Rick Perry, Governor

TRD-200205903

♦ ♦ ♦

Executive Order

RP 17

Relating to honoring the victims of the violence against the United States of America on September 11, 2001.

WHEREAS, on September 11, 2001, the United States of America suffered a series of devastating assaults by terrorists whose acts brought great anguish to our state and nation; and

WHEREAS, George W. Bush, President of the United States, has designated September 6-8 as "National Days of Prayer and Remembrance," asking all Americans to join in unity to honor the victims of September 11th, to pray for those who grieve, and to give thanks for God's enduring blessings on our land; and

WHEREAS, on September 11, 2002, President and Mrs. Bush will lead the White House staff in a moment of silence at 7:46 a.m. (CST), marking the time that the first plane struck the World Trade Center;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby ask all Texans to join in observing the "National Days of Prayer and Remembrance," and in observing, on September 11, 2002, a moment of silence at 7:46 a.m.

This order is effective immediately and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 6th day of September, 2002.

Rick Perry, Governor

TRD-200205904

♦ ♦ ♦

Executive Order

RP 18

Relating to flying the Texas flag at half-staff to honor the victims of the acts of terrorism committed against the United States of America on September 11, 2001.

WHEREAS, on September 11, 2001, the United States of America suffered devastating assaults by terrorists whose acts brought great anguish to our state and nation; and

WHEREAS, George W. Bush, President of the United States, has designated September 6-8 as "National Days of Prayer and Remembrance," asking all Americans to join in unity to honor the victims of September 11th, to pray for those who grieve, and to give thanks for God's enduring blessings on our land; and

WHEREAS, the governor is empowered by §3100.065(e), Texas Government Code, to order the flying of the state flag at half-staff on the death of an individual as a mark of respect to the individual's memory;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

The flag of the State of Texas shall be flown at half-staff at the state Capitol Building and in the Capitol Complex, the Governor's Mansion, and upon all public buildings, grounds, and facilities throughout the state on Wednesday, September 11, 2002. I also direct that the flag shall be flown at half-staff for the same length of time at all Texas offices and facilities abroad.

Individuals, businesses, municipalities, counties, and other political subdivisions are encouraged to fly the flag at half-staff for the same length of time as a sign of respect for those who have lost their lives in this tragedy.

This executive order remains in effect until sunset, Wednesday, September 11, 2002.

Given under my hand this the 6th day of September, 2002.

Rick Perry, Governor

TRD-200205905

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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.

Open Records Question

Pursuant to §402.042 of the Texas Government Code, the Office of the Attorney General will prepare and publish a formal decision on the following issue:

ORQ-61 (ID# 167433) RE: Whether the Grand Prairie Municipal Police Department may release to the Grand Prairie Independent School District the name, address, and date of citation of each school-age resident of the district who is cited by the department for consuming or possessing alcohol in violation of §106.04 or §106.05 of the Texas Alcoholic Beverage Code.

Requestor: The Honorable Toby Goodman, Chairman, Juvenile Justice and Family Issues Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768.

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than October 11, 2002.

For further information, please contact Michael Garbarino at (512) 936-6736.

TRD-200205931
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 11, 2002

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Opinions

Opinion No. JC-0549

The Honorable Tom Ramsay, Chair, County Affairs Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether article 1.051 of the Texas Code of Criminal Procedure requiring that counsel for indigent criminal defendants be appointed within one day of the defendant's request in populous counties and within three days of the request in less populous counties violates state and federal equal protection guarantees, and related question (RQ-0519-JC)

S U M M A R Y

A court would likely find that article 1.051(c) of the Code of Criminal Procedure, as amended by the Texas Fair Defense Act, requiring that counsel for indigent criminal defendants be appointed within one day of the defendant's request in populous counties and within three days of the request in less populous counties does not violate the equal protection guarantees of the state and federal constitutions. The legislature has defined "indigency" and provided a flexible standard applicable to all counties for the purposes of appointing counsel to indigent defendants under article 1.051. A court would likely find that the article 1.051 indigency standard because of its relative flexibility does not violate, on its face, the state and federal guarantees of equal protection.

Opinion No. JC-0550

The Honorable Warren Chisum, Chair, Environmental Regulation Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the Texas Funeral Service Commission is authorized to register nonprofit cemeteries, and related questions (RQ-0523-JC

S U M M A R Y

Under chapter 651 of the Occupations Code, the Texas Funeral Service Commission (the "Commission") is required to register cemeteries "operated not-for-profit" if they sell goods or services related to the burial or disposition of a body. Additionally, owners or operators of crematories located on the site of perpetual care cemeteries are required to register with the Commission and pay the required registration fee. The Commission is authorized to investigate cemeteries or crematories only upon the receipt of consumer complaints. Finally, the Commission is authorized to request from cemeteries or crematories copies of their purchase agreements and retail price lists.

Opinion No. JC-0551

The Honorable J.E. "Buster" Brown, Chair, Senate Natural Resources Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether the term "two designated lanes of a highway," as used in section 545.0651(b) of the Texas Transportation Code, may be construed to mean "two or more lanes" (RQ-0524-JC)

S U M M A R Y

Section 545.0651(b) of the Texas Transportation Code authorizes a municipality to "restrict, by class of vehicle, through traffic to two designated lanes of a highway in the municipality." The term "two" means precisely *two* and may not be construed to mean "two or more."

Opinion No. JC-0552

The Honorable Toby Goodman, Chair, House Committee on Juvenile Justice and Family Issues, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether a county is required to establish a certificate of registration program for dangerous wild animals, and related questions (RQ-0525-JC)

S U M M A R Y

The commissioners court of every county that has not entirely prohibited the "ownership, possession, confinement, or care" of dangerous wild animals within its jurisdiction is required to have adopted, no later than December 1, 2001, an order "necessary to implement and administer the certificate of registration program" established by subchapter E of chapter 822 of the Texas Health and Safety Code. See Act of Apr. 25, 2001, 77th Leg., R.S., ch. 54, § 6(c), 2001 Tex. Gen. Laws 90, 96; Tex. Health & Safety Code Ann. § 822.116(b) (Vernon Supp. 2002). A commissioners court may not exempt from the requirements of subchapter E any person or organization not specifically excepted under section 822.102(a). Any resident of the county may bring an action in mandamus in a district court of the county to compel the commissioners court to adopt the certificate of registration program.

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

TRD-200205944
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 11, 2002

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning attendant compensation rate enhancement, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to provide for the distribution of funds collected as recoupments to qualifying participating contracts that spent above their required attendant compensation rate level.

The proposed amendment eliminates the six-month attendant compensation reporting requirement; requires preparers of annual reports to attend cost report training; allows for the delay or cancellation of the annual enrollment; clarifies the date of receipt of enrollment contract amendments; clarifies the time frame a provider must remain a nonparticipant after failing to submit a compensation report; and allows providers that acquire a contract through a contract assignment to modify their enrollment status. References to the Texas Department of Human Services (DHS) have been deleted or replaced with references to HHSC.

DHS is proposing related policy in its Chapter 20 in this issue of the *Texas Register*.

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

Steve Lorenzen, Director, Rate Analysis, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be that providers that compensated their attendants greater than the payment rates they received may be eligible for additional payments up to the amount of compensation paid to their attendants. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal offers flexibility to contracted providers to participate in the attendant compensation rate enhancement system, eliminates paperwork requirements, and clarifies procedural requirements. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685- 3127 in Rate Analysis of HHSC. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-258, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

For further information regarding the proposal or to make the proposal available for public review, contact local DHS offices or Carolyn Pratt at (512) 685-3127 in Rate Analysis of HHSC.

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

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

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

§355.112. Attendant Compensation Rate Enhancement.

(a)-(d) (No change.)

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC [~~The Texas Department of Human Services (DHS)~~] may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group or as individuals for purposes related to the attendant compensation rate enhancement. For the PHC/FC program, the participating provider must also specify if he wishes to have either priority 1, nonpriority, or both priority 1 and nonpriority services participating in the attendant compensation rate enhancement. If the PHC/FC provider selects to have their contracts participating as a group, then the provider must select to have either priority 1, nonpriority, or both priority 1 and

nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis [~~DHS's Rate Analysis Department~~] by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis [~~DHS's Rate Analysis Department~~] has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to [~~DHS~~] instructions, signed by an authorized signatory as per the Texas Department of Human Services (DHS) Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to [~~DHS~~] instructions, signed by an authorized signator as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis [~~DHS's Rate Analysis Department~~] within 30 days of the date [~~DHS's mailing~~] of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) until:

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

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted by participating contracted providers as follows.

(1) Contracted providers participating for the full rate year. Contracted providers participating for the full rate year must provide annual Attendant Compensation Reports as follows:

(A) [~~Annual report.~~] Participating contracted providers will provide HHSC Rate Analysis [~~DHS~~], in a method specified by HHSC Rate Analysis [~~DHS~~], an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all [~~participating~~] contracts participating at the end of the rate year within one program of the provider. [~~The aggregate report must include contracts that are new, excluded from participation, voluntary withdrawal from participation, and contract assignments, as defined in subparagraphs (B)-(E) of this paragraph, which were part of the group for any portion of the rate year.~~] A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis [~~DHS. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows~~].

(B) Contracts whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) Contracted providers participating for less than a full year. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows:

(A) A participating provider whose contract is terminated either voluntarily or involuntarily before the end of the rate year must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(B) In cases where a participating provider changes ownership through a contract assignment, the owner prior to the change of ownership must submit an Attendant Compensation Report, covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by DHS. The owner, after the change of ownership, must submit an Attendant Compensation Report [~~report~~] within 60 days of the end of the rate year, covering the period from the effective date of the contract assignment as determined by DHS to the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) A participating provider who is excluded from participation as per subsection (u) of this section must submit an Attendant Compensation Report within 60 days from the date of notification of the exclusion, covering the period from the beginning of the rate year to the date of exclusion as determined by HHSC Rate Analysis. [~~DHS. DHS will use this~~] This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(D) A participating provider who voluntarily withdraws from participation as per subsection (x) of this section must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC [~~DHS~~], covering the period from the beginning of the rate year through the date of withdrawal as determined by HHSC. [~~DHS. DHS will use this~~] This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(E) A participating provider who is a new contractor as per subsection (g) of this section must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the first day of the contract as determined by DHS [~~month following receipt by DHS's Rate Analysis Department of an acceptable enrollment contract amendment as per paragraph (g)(1) of this section~~] through the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

[~~(2) Six-month report. Within 60 days of the end of the first six months of the rate year, participating contracted providers will provide DHS, in a method specified by DHS, a six-month Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of February of the rate year. The report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. Participating providers will use this six-month report to assist them in determining their level of compliance with the spending requirements and to take any appropriate action necessary to come into compliance with the spending requirements. The provider is responsible for the management of attendant compensation expenditures in compliance with the spending requirements stated in subsection (s) of this section.~~]

(3) Other reports. HHSC [~~DHS~~] may require other reports from all contracts as needed.

(4) Vendor hold. HHSC [~~DHS~~] will place on hold the vendor payments for any contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable Attendant Compensation Report [~~is received by DHS~~].

(A) Contractors participating at the end of the rate year [~~Participating contractors~~] who do not submit an [~~annual~~] Attendant Compensation Report in accordance with paragraphs (1), (2)(B), and (2)(E) of this subsection, completed in accordance with all applicable rules and instructions within 60 days of the vendor hold being placed will become a nonparticipant retroactive to the first day of the reporting period [~~nonparticipants~~] until the first day of the month after all of the following conditions are met:

(i) [~~(A)~~] the provider submits an acceptable annual Attendant Compensation Report;

(ii) [~~(B)~~] the provider submits a separate Attendant Compensation Report from the beginning of the current rate year to the date they were disenrolled as a participant;

(iii) [~~(C)~~] the provider repays to DHS funds that are identified for recoupment from subsection (s) of this section; and

(iv) [~~(D)~~] HHSC Rate Analysis [~~DHS~~] receives, in writing by certified mail, a request from the provider to be restored to the participant status.

(B) Contractors not participating at the end of the rate year who do not submit an Attendant Compensation Report in accordance with paragraph (2)(A)-(D) of this subsection, completed in accordance with all applicable rules and instructions, within 60 days of the vendor hold being placed will become nonparticipants from the beginning of the rate year to the date of ownership change, exclusion, or withdrawal.

(i) Attendant Compensation Report contents. Each Attendant Compensation Report will include any information required by HHSC [~~DHS~~] to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102-355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs).

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC [~~DHS~~] a signed enrollment contract amendment as described in subsection (f) of this section[~~, before the end of the enrollment period~~]. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC/FC, participation is also determined separately for priority 1 and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC [~~DHS~~], in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC [~~DHS~~] excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC [~~DHS~~]. Contracts excluded from participation will have their participation end effective on the date determined by HHSC [~~DHS~~].

(l) Determination of attendant compensation rate component for participating contracts. For each of the programs identified in subsection (a) of this section, an attendant compensation rate component [~~enhancement increments associated with each enhanced attendant compensation level~~] will be determined for participating contracts from subsection (k) of this section. The attendant compensation rate enhancement component [~~increments~~] will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement component [~~increments~~] will be determined on a per-unit-of-service basis applicable to each program or service.

(m) Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section, HHSC [~~DHS~~] will calculate an attendant compensation rate component for nonparticipating contracts as follows.

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

(3) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit [~~hour~~] of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for all programs in subsection (a) of this section except

for RC and AL/RC, which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.

(4) (No change.)

(n) Determination of attendant compensation rate enhancements. HHSC [~~DHS~~] will determine attendant compensation rate enhancement increments associated with each enhanced attendant compensation level. The attendant compensation rate enhancement increments will be determined by using data from sources such as cost reports, surveys, and/or other relevant sources. The attendant compensation rate enhancement increments will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement increments will be determined on a per-unit-of-service basis applicable to each program or service.

(o) (No change.)

(p) Granting additional attendant compensation rate enhancement increments. HHSC [~~DHS~~] divides all requests for attendant compensation rate enhancement increments into two groups: pre-existing rate enhancement increments which providers requested to carry over from the prior year and newly requested rate enhancement increments. Newly requested rate enhancement increments may be requested by providers who were nonparticipants in the prior year or by providers who were participants during the prior year desiring to be granted additional rate enhancement increments. Using the process described herein, HHSC [~~DHS~~] first determines the distribution of carry-over rate enhancement increments. If funds are available after the distribution of carry-over rate enhancement increments, HHSC [~~DHS~~] determines the distribution of newly requested rate enhancement increments as follows:

(1) HHSC [~~DHS~~] determines projected units of service for contracts requesting each enhancement increment and multiplies this number by the enhancement rate add-on amount associated with that enhancement increment as determined in subsection (n) of this section.

(2) HHSC [~~DHS~~] compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) (No change.)

(B) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC [~~DHS~~] may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts are notified, in a manner determined by HHSC [~~DHS~~], as to the disposition of their request for additional attendant compensation rate enhancement increments.

(r) (No change.)

(s) Spending requirements for participating contracts. HHSC [~~DHS~~] will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. If the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement, as specified in subsection (f) of this section, compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report [~~attendant compensation report~~] described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. HHSC [~~DHS~~] will calculate recoupment, if any, as follows.

(1) (No change.)

(2) The adjusted attendant compensation per unit of service from paragraph (1) of this subsection will be subtracted from the accrued attendant compensation revenue to determine the amount to be recouped [~~by DHS~~]. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(3) (No change.)

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC [~~DHS within 90 days of the due date of their annual Attendant Compensation Report as described in subsection (h)(1) of this section or within 90 days of the date the report is submitted, whichever is later,~~] of the amount to be repaid to DHS. If a subsequent review or audit results in audit adjustments to the annual Attendant Compensation Report that changes the amount to be repaid [~~to DHS~~], the provider will be notified in writing of the adjustments and the adjusted amount to be repaid to DHS. DHS will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Exclusion from participation. Effective with the rate year that begins September 1, 2002, if [~~If~~] the Attendant Compensation Report [~~attendant compensation report~~] described in subsection (h)[~~(1)~~] of this section indicates that the participating provider did not meet their spending requirement [~~spend 90% of the accrued total attendant compensation rate described in subsection (r) of this section on attendant compensation spending~~] as determined from subsection (s) of this section, HHSC [~~DHS~~] will notify the provider of the noncompliance. If the subsequent [~~six-month~~] compensation report from subsection (h)[~~(2)~~] of this section indicates that the provider has not met their spending requirement [~~spent 90% of the attendant compensation revenue on attendant compensation spending~~], the contract will be excluded from participation in the attendant rate enhancement effective immediately upon notice of failure to meet the spending requirement. The contract will be excluded from participation in the attendant compensation rate enhancement and will remain a nonparticipant for the remainder of the rate year in which the determination was made plus an additional rate year. Providers whose contracts are participating as a group must meet the requirements of this subsection as a group or all the contracts of the group will be excluded.

(v) Contract terminations. For terminating participants, HHSC [~~DHS~~] will place a vendor hold on the payments of the contracted provider until HHSC [~~DHS~~] receives an acceptable Attendant Compensation Report, as specified in subsection (h) (2)[~~(1)~~](A) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the terminating

provider's last vendor payment, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(w) Contract assignments. The following applies to contract assignments.

(1) Contracts participating under the prior legal entity will continue participation under the legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as individuals, participation in the attendant compensation rate enhancement confers to the provider or legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as a group, the contract will participate with the group of the legal entity accepting the contract assignment for purposes related to the attendant compensation rate enhancement. When the provider or legal entity accepting the contract assignment [~~new owner~~] has no contracts participating, the individual or group status of participating contracts under the old owner will transfer to the new owner. When the provider or legal entity accepting the contract assignment has its contracts participating as individuals or has no contracts participating, the provider or legal entity may submit an enrollment contract amendment to modify the enrollment of the assigned contract. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and be legible.

(2) When the contract assignment is an ownership change from one legal entity to a different legal entity, HHSC [~~DHS~~] will place a vendor hold on the payments of the existing contracted provider until HHSC [~~DHS~~] receives an acceptable Attendant Compensation Report specified in subsection (h)(2)[~~(1)~~](B) of this section and until funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the existing contracted provider's vendor payments that are being held, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis [~~DHS~~] in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis [~~DHS~~] by certified mail. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z) - (cc) (No change.)

(dd) Reinvestment. HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) HHSC Rate Analysis has received an acceptable Attendant Compensation Report completed in accordance with all applicable rules and instructions.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) HHSC determines units of service provided during the most recently completed reporting period by each qualifying contract and multiplies this number by the attendant compensation spending per unit of service minus the attendant compensation rate per unit of service for the reporting period.

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

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

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

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

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 September 5, 2002.

TRD-200205828
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.201, concerning general specifications and methodology; §355.301, concerning general reimbursement information; §355.302, concerning cost reporting requirements: 1995 and 1996 cost reports; §355.303, concerning allowable and unallowable costs: 1995 and 1996 cost reports; §355.304, concerning list of allowable costs; §355.305, concerning list of unallowable costs; §355.310, concerning vendor hold; §355.504, concerning reimbursement methodology for the Community Living Assistance and Support Services waiver program--a 1915(c) Medicaid home and community-based waiver for persons with related conditions; §355.6901, concerning introduction; §355.6902, concerning cost reporting procedures; §355.6903, concerning reimbursement determination; §355.6904, concerning allowable cost information; §355.6905, concerning list of allowable costs; and §355.6906, concerning unallowable costs, in its Medicaid Reimbursement Rates chapter. The purpose of the repeals is to delete obsolete reimbursement methodology rules applicable to pre-1997 Cost Reports. With the implementation of the cost determination process rules effective with the 1997 Cost Reports, there were two sets of reimbursement methodology rules for each Medicaid program operated by the Texas Department of Human Services (DHS) for which cost reports were required. One set of reimbursement methodology rules applies to cost reports prior to 1997, and the other set of rules applies to cost reports after 1997. This proposal repeals outdated reimbursement methodology rules for those Medicaid programs and also repeals an obsolete general rule regarding pre-1997 Cost Reports in §355.201.

DHS is proposing related repeals of obsolete non-Medicaid reimbursement methodology rules for the Day Activity and Health Services Program in its Chapter 98 in this issue of the *Texas Register*.

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

Steve Lorenzen, Director, Rate Analysis, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to have obsolete rule language eliminated from the rule base. Additionally, eliminating these sections will lessen provider confusion as to which program-specific reimbursement methodology rules are in effect, since there no longer will be two sets of published reimbursement methodologies, each applicable to different cost-reporting periods. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeals, because the proposal deletes obsolete rule language and lessens provider confusion as to which program-specific reimbursement methodology rules are in effect. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

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

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in HHSC Rate Analysis for Long Term Care-Aged & Disabled. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. REIMBURSEMENT METHODOLOGY

1 TAC §355.201

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

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

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

§355.201. General Specifications and Methodology.

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 September 6, 2002.

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §§355.301 - 355.305, 355.310

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

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

The repeals implement the Government Code, §§531.033 and 531.021(b).

§355.301. General Reimbursement Information.

§355.302. Cost Reporting Requirements: 1995 and 1996 Cost Reports.

§355.303. Allowable and Unallowable Costs: 1995 and 1996 Cost Reports.

§355.304. List of Allowable Costs.

§355.305. List of Unallowable Costs.

§355.310. Vendor Hold.

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

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.504

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

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

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

§355.504. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program--a 1915(c) Medicaid Home and Community-based Waiver for Persons with Related Conditions.

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

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SUBCHAPTER G. TELEMEDICINE SERVICES

1 TAC §§355.6901 - 355.6906

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

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

The repeals implement the Government Code, §§531.033 and 531.021(b).

§355.6901. Introduction.

§355.6902. Cost Reporting Procedures.

§355.6903. Reimbursement Determination.

§355.6904. Allowable Cost Information.

§355.6905. List of Allowable Costs.

§355.6906. Unallowable Costs.

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

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §80.136

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new §80.136 to address certain logistical issues that have arisen with respect to the administration of the Texas Manufactured Housing Standards Act (the "Act"), as amended by HB 1869 (77th Legislature, 2001). The Department requires current information on the installation of manufactured homes to enable it to schedule the newly installed homes for inspections and to enable it to administer the Act with complete and current information as to manufactured homes that have become real property.

Section 80.136(a)(1) is intended to clarify that the closing of the sale of a manufactured home that is deemed to be real property must occur at one of three prescribed locations: a title company,

an attorney's office, or the offices of a federally insured financial institution.

Section 80.136(a)(2) and (3) provide that when a retailer engages a third party, such as a title company or an attorney, to surrender documents in accordance with §19(l) of the Act, they must do so under written instructions, and the surrender of required documents must be done on a timely basis. This will enable the Department to assemble and maintain current and accurate data regarding the installation of manufactured homes as real property and to schedule timely inspections of installations, as required by the Act. This is intended to address those situations where the documents are being obtained at closing but are not being surrendered on a timely basis.

Section 80.136(a)(4) and (5) restate the statutory requirements for the manner of installation of manufactured homes as real property and require the installer to document the manner in which they determine that a home has, in fact, been installed as required.

Section 80.136(b) would require the installer of a manufactured home to determine who owns the real property on which the home will be situated. This is essential for determining if the installation requirements of §80.136(a)(4) are applicable, and it would enable the Department to obtain information to enable it to determine if installation as real property has triggered an inspection as such, along with the payment of the required fee.

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hill also has determined that for each year of the first five years the section as proposed is in effect the public benefit as a result of enforcing the section will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The adoption of new §80.136 is expected to have no material economic costs to persons/businesses who are required to comply with the section as proposed.

Comments may be submitted to Ms. Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address bhill@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new section.

§80.136. Homes Acquired on or after January 1, 2002.

(a) When the a retail sale of a manufactured home occurs and that home will be treated as real property under §19A of the Standards Act:

(1) The closing of that sale must occur at either a title company authorized to do business in Texas, an attorney's office, or an office of a federally insured depository institution, regardless of whether the sale is financed or is for cash and regardless of whether the manufactured home or the real property on which it will be located is or will be the homestead of the purchaser.

(2) It is the responsibility of the seller of the home to surrender the document of title or Manufacturer's Certificate of Origin for cancellation in accordance with §19(l) of the Standards Act. If the document of title or Manufacturer's Certificate of Origin has been delivered to a third party, such as an inventory lender or a title company, that third party must agree, in writing, to act as the retailer's agent and surrender such documents as required by §19(l) of the Standards Act and these rules.

(3) If §19(l) of the Standards Act requires a document of title or Manufacturer's Certificate of Origin to be surrendered for cancellation, the surrender is to be effected not later than one calendar month, not to exceed thirty-one (31) days, from the date of the closing of the transaction that gave rise to the requirement of surrendering for cancellation.

(4) The installation must occur in a manner that satisfies either:

(A) the requirements for Federal Housing Administration (FHA) Title I mortgage insurance;

(B) the requirements for FHA Title II mortgage insurance;

(C) the requirements of Federal Home Loan Mortgage Corporation (FHLMC) for long term mortgages, or

(D) the requirements of Federal National Mortgage Association (FNMA) for long term mortgages.

(5) The method or manner of installation must be supported by documentation establishing the particular requirement with which it complies and the basis on which it was concluded that such particular requirement and particular department standard were met, such as a report by;

(A) an FHA, FNMA, or FHLMC approved inspector;

(B) an engineer, architect, real estate inspector, or appraiser licensed by the state of Texas; or

(C) an inspector employed by and inspecting for the state of Texas or a local government in Texas.

(b) When a manufactured home is installed or re-installed, the licensed installer (or, in the case of a retail sale of a new home, the retailer) shall provide to the Department a statement as to the name of the legal owner(s) of the property on which such manufactured home is being installed.

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 September 6, 2002.

TRD-200205859

Bobbie Hill
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 475-2206

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PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM
SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1 - 255.11

The Office of Rural Community Affairs proposes an amendment to §255.1 - 255.11, concerning the review of grant applications.

These sections contain review requirements for the Texas Community Development Program (TCDP).

The executive committee will review grant applications exceeding $300,000.00 excluding the Texas Capital Fund.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications to state and local governments as a result of administering the sections as proposed.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office has determined that the public benefit anticipated is the resolution of issues for major grant awards. There will be no adverse effect on any small business or micro-business. There are no anticipated economic costs to persons who are required to comply with these sections. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877 1708, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the agency's responsibilities.

The amendments affect Chapter 487 of the Government Code.

§255.1. General Provisions

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office [~~Department~~] or to the Texas Department of Agriculture (TDA) [~~Economic Development (TDED)~~].

(2) Application--A written request for Texas Community Development Program TCDP funds in the format required by the Office [~~Department~~] or by the TDA [~~Texas Department of Economic Development~~] for Texas Capital FundTCF applications

(3) - (4) (No change.)

(5) Contract--A written agreement, including all amendments thereto, executed by the Office [~~Department~~], or by the TDA [~~Texas Department of Economic Development~~], and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office [~~Department~~] or the TDA [~~Texas Department of Economic Development~~] has executed a contract.

(7) Office [~~Department~~]--The Office of Rural [~~Texas Department of Housing and~~] Community Affairs.

(8) - (15) (No change.)

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353 [~~§2306.100. In accordance with the provisions of Article 6252-33, Texas Civil Statutes, the Board of Directors of the Department has established September 1, 2009, as the date for abolishment of the State Community Development Review Committee~~].

(17) - (18) (No change.)

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TCDP [~~Texas Community Development Program~~] to eligible units of general local government in the following program areas:

(1) (No change.)

(2) Texas Capital fund. The Texas Capital Fund TCFis administered by the TDA [~~Texas Department of Economic Development~~] under an interagency agreement with the Office [~~Department~~]. Applications for the TCF [~~Texas Capital Fund~~] shall be submitted to the TDA [~~Texas Department of Economic Development~~].

(3) - (9) (No change.)

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TCDP [~~Texas Community Development Program~~] fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF [~~Texas Capital Fund~~], community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) (No change.)

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefitting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP [~~Texas Community Development Program~~] fund category.

(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program

application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP [~~Texas Community Development Program~~] fund category.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TCDP [~~Texas Community Development Program~~] fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office [~~Department~~] and the TDA [~~Texas Department of Economic Development~~], in instances where the TCF [~~Texas Capital Fund~~] is accessed, for financial compliance and program performance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TCDP [~~Texas Community Development Program~~] requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF [~~Texas Capital Fund~~] and single jurisdiction applications described in paragraph (1)(A) - (C) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TCDP [~~Texas Community Development Program~~]. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TCDP [~~Texas Community Development Program~~].

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TCDP [~~Texas Community Development Program~~] application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TCDP [~~Texas Community Development Program~~] contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF [~~Texas Capital Fund~~]: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefitting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefitting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office [~~Department~~] and, in the case of TCF [~~Texas Capital Fund~~] hearings, by the TDA [~~Texas Department of Economic Development~~], in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) - (C) (No change.)

(2) Application requirements. Prior to submitting a formal application, an applicant for TCDP [~~Texas Community Development Program~~] funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office [~~Department~~] and, in the case of TCF [~~Texas Capital Fund~~] applications, to the TDA [~~Texas Department of Economic Development~~].

(B) (No change.)

(C) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TCDP [~~Texas Community Development Program~~], the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCDP [~~Texas Community Development Program~~] funds, and the use of past TCDP [~~Texas Community Development Program~~] contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.

(D) - (E) (No change.)

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office [~~Department~~] and, in the case of TCF [~~Texas Capital Fund~~] program changes, by the TDA [~~Texas Department of Economic Development~~], proposed to be made in the use of TCDP [~~Texas Community Development Program~~] funds from one eligible activity to another.

(B) - (D) (No change.)

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. The complaint procedures for contractors must comply with the requirements of the TCDP [~~Texas Community Development Program~~] Complaint System, Part I, §§1.11-1.13 of this title (relating to General Provisions, Nonrenewal of Contracts and Reduction in Funding, and Complaint System). Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TCDP [~~Texas Community Development Program~~] funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TCDP [~~Texas Community Development Program~~] may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office [~~Department~~] staff and, in the case of TCF [~~Texas Capital Fund~~] applications, by TDA [~~Texas Department of Economic Development~~] staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office [~~Department~~] and, in the case of TCF [~~Texas Capital Fund~~] applications, by the TDA [~~Texas Department of Economic Development~~] due to human or computer error.

(C) Other procedural error. The application is not processed by the Office [~~Department~~] and, in the case of TCF [~~Texas Capital Fund~~] applications, by the TDA [~~Texas Department of Economic Development~~], in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §9.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TCDP [~~Texas Community Development Program~~] of the Office [~~Department~~] no later than 30 days after the date the announcement of community development fund and planning/capacity building fund contract awards is published in the Texas Register. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office [~~Department~~] staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office [~~Department~~]. The decision of the executive director of the Office [~~Department~~] is final. If the appeal concerns a TCF [~~Texas Capital Fund~~] application, the appeal must be submitted in writing to the TDA [~~Texas Department of Economic Development~~] no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a small towns environment program fund, disaster relief fund, or urgent need fund application, the appeal must be submitted in writing to the Office [~~Department~~] no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a housing fund, colonia fund or Young v. Cuomo fund application, the appeal must be submitted in writing to the Office [~~Department~~] no later than 30 days after the date the announcement of contract awards is published in the Texas Register. The staff of either the Office [~~Department~~] or the TDA [~~Texas Department of Economic Development~~], when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office [~~department~~] notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a Young v. Cuomo fund, TCF [~~Texas Capital Fund~~], housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) (No change.)

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TCDP [~~Texas Community Development Program~~]:

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

(4) demonstrate satisfactory performance on previously awarded TCDP [~~Texas Community Development Program~~] contracts;

(5) resolve all outstanding compliance and audit findings related to previously awarded TCDP [~~Texas Community Development Program~~] contracts and any other Office [~~Department~~] contracts;

(6) submit any past due audit to the Office [~~Department~~] in accordance with §1.3 of this title (relating to Delinquent Audits and Related Issues); and

(7) TCDP [~~Texas Community Development Program~~] funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TCDP [~~Texas Community Development Program~~] funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCDP [~~Texas Community Development Program~~] funds by the incorporated city.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office [~~Department~~] where the Office [~~Department~~] finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TCDP [~~Texas Community Development Program~~] funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office [~~department~~] for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) (No change.)

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office [~~Department~~] refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a Young v. Cuomo fund, colonia fund, disaster relief fund, housing fund, small towns environment program fund, or urgent need fund application, the Office [~~Department~~] staff shall make a recommendation for action to the executive director of the Office [~~Department~~]. If the applicant provides false information in a TCF [~~Texas Capital Fund~~] application, TDA [~~Texas Department of Economic Development~~] staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office [~~Department~~] at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TCDP [~~Texas Community Development Program~~] funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TCDP [~~Texas Community Development Program~~] funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) (No change.)

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office [~~Department~~] and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF [~~Texas Capital Fund~~].

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office [~~department~~].

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office [~~department~~] by the application deadline, for verification and spot-checking.

(3) - (4) (No change.)

(5) A survey that was completed on or after January 1, 1990, for a previous TCDP [~~Texas Community Development Program~~] application may be accepted by the Office [~~Department~~] for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income (except program income recovered from local revolving loan funds) generated by TCF [~~Texas Capital Fund~~] projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF [~~Texas Capital Fund~~] projects will be used by the Office [~~TDHCA~~] for eligible TCDP [~~Texas Community Development Program~~] activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TCDP [~~Texas Community Development Program~~] Fund, including program income recovered from TCF [~~Texas Capital Fund~~] local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office [~~TDHCA~~] Executive Director, or when applicable, approved of the TDA [~~Board of Directors of the Texas Department of Economic Development~~] on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; and the Office's [~~Department's~~] special targeted activities (e.g., colonias, special housing projects, Texas Small Town Environment Program (STEP), TCF [~~Texas Capital Fund~~], etc.) as the next highest priority.

(m) Waivers. The Office [~~Department~~] may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's [~~contractor~~] written request for such a waiver if the Office [~~Department~~] finds that compelling circumstances exist outside the control of the applicant or contractor which justify the approval of such a waiver. The Office[~~Department~~] shall not waive any provision hereof concerning the TCF [~~Texas Capital Fund~~] program unless written request to do so is received from the Executive Director of the TDA [~~Texas Department of Economic Development~~]. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA [~~Texas Department of Economic Development~~] for the Office [~~Department~~]. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total funds awarded under a contract with a 24 month contract period (except for TCF [~~Texas Capital Fund~~] contracts, housing fund contracts, colonia self-help center contracts, colonia economically distressed area program contracts, Young v. Cuomo contracts, and small towns environment program fund contracts) executed at least 12 months prior to the current program year application deadline. This paragraph does not apply to disaster relief fund applicants.

(2) Obligate at least 50% of the total funds awarded under a contract with a thirty-six month contract period (except for TCF [~~Texas Capital Fund~~] contracts, housing fund contracts, colonia self-help center contracts, colonia economically distressed area program contracts, Young v. Cuomo contracts, and small towns environment program fund contracts) executed at least 18 months prior to the current program year application deadline. This paragraph does not apply to disaster relief fund applicants.

(3) Expend all but the reserved audit funds, or other reserved funds that are pre-approved by TCDP [~~Texas Community Development Program~~] staff, awarded under a contract with a contract period of 24 months (except for TCF [~~Texas Capital Fund~~] contracts,

housing fund contracts, colonia self-help center contracts, colonia economically distressed area program contracts, Young v. Cuomo contracts, and small towns environment program fund contracts) that has been in effect for at least 24 months prior to the current program year application deadline and submit to the Office [~~Department~~] a certificate of completion required by the most recent edition of the TCDP [~~Texas Community Development Program~~] Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by TCDP [~~Texas Community Development Program~~] staff. This paragraph does not apply to disaster relief fund applicants.

(4) TCF [~~Texas Capital Fund (TCF)~~] applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA [~~TDED~~] must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA [~~TDED~~] must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF [~~Texas Capital Fund~~] Implementation Manual).

(5) Expend all but the reserved audit funds or other reserved funds that are pre-approved by TCDP [~~Texas Community Development Program~~] staff, awarded under a contract (except for TCF [~~Texas Capital Fund~~] contracts, housing fund contracts, colonia self-help center contracts, colonia economically distressed area program contracts, Young v. Cuomo contracts, and small towns environment program fund contracts) with a contract period of 36 months and that has been in effect for at least 36 months prior to the current program year application deadline, and submit to the Office [~~Department~~] a certificate of completion required by the most recent edition of the TCDP [~~Texas Community Development Program~~] Project Implementation Manual which documents the expenditure of all contract funds with the exception of any contract funds reserved for audits and other reserved funds that are pre-approved by TCDP [~~Texas Community Development Program~~] staff. This paragraph does not apply to disaster relief fund applicants.

(o) State review committee. The committee shall consult with and advise the Office's [~~department's~~] executive director on the administration and enforcement policies of the TCDP [~~Texas Community Development Program~~]; review funding recommendations for applicants under the community development fund and planning/capacity building fund and assist the Office's [~~department's~~] executive director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's [~~department's~~] executive director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's [~~Department's~~] executive director through the minutes of committee meetings and written reports prepared by Office [~~Department~~] staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office [~~Department~~] to encourage minority employment and participation among all applicants under the TCDP [~~Texas Community Development Program~~]. All applicants to the TCDP [~~Texas Community Development Program~~] are required to submit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TCDP [~~Texas Community Development Fund~~] contract must meet the requirements for Revolving Loan Funds described in the TCDP [~~Texas Community Development Program~~] Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TCDP [~~Texas Community Development Program~~] contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office [~~Department~~].

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities.

(1) An applicant may not submit an application under this fund and also under any other TCDP [~~Texas Community Development Program~~] fund category at the same time if the proposed activity under each application is the same or substantially similar. An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under the housing rehabilitation fund.

(2) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2001 and 2002 program years pursuant to regional competitions held for the 2001. Applications for funding must be received by the TCDP [~~Texas Community Development Program~~] by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) (No change.)

(2) Each state planning region is provided with a 2001 program year target allocation and a 2002 program year target allocation of funds for applications in its region that are ranked through the 2001 program year regional competitions in accordance with a shared scoring system involving the Office [~~Department~~] and the regional review committees. Where the remainder of the 2001 program year target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through a combination of 2001 and 2002 program year funds. Where the remainder of the 2002 program year target allocation is insufficient to completely fund the next ranked application, the Office [~~Department~~] works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible, the remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by theOffice [~~department~~] under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit an application to the Office [~~Department~~] for funding under the community development fund. Two copies of the application must be submitted. Each applicant must also provide at least one copy of its application to the applicant's regional review committee within two weeks after the Office [~~Department~~] submission deadline.

(2) Upon receipt of an application, the Office [~~Department~~] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee shall hold a scoring meeting in accordance with the procedures specified in the Office's [~~Department's~~] regional review committee guidebook and in accordance with the procedures and priorities previously established by each regional review committee. Each regional review committee must provide every applicant within its region with an opportunity to make a presentation before the regional review committee. The regional review committee will then score the regional review committee scoring factors.

(4) Following the resolution of any appeals from actions of the regional review committees as specified in §9.8 of this title (relating to Regional Review Committees) the Office [~~Department~~] adds scores relating to community distress, benefits to low-and moderate-income persons, project impact, other considerations, and match to the regional review committees' scores to determine regional rankings. Scores on the factors in these categories are derived from standardized data from the U.S. Census Bureau, Texas Workforce [~~Employment~~] Commission, and from information provided by the applicant.

(5) Following a final technical review, the Office [~~Department~~] staff presents the 2001 program year and the 2002 program year funding recommendations to the state review committee. Office [~~Department~~] staff make a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(6) The funding recommendations of the state review committee are then provided to the executive director of the Office [~~Department~~]. If the state review committee recommendations differ from the funding recommendations of a regional review committee, the state review committee must provide the affected regional review committee with a written explanation of its determination. The regional review committee may then provide a response to the executive director of the Office [~~Department~~]. If there is not a consensus between a regional review committee and the state review committee, all review comments by all of the parties involved in the selection process will be forwarded to the executive director of the Department.

(7) The executive director of the Office [~~Department~~] reviews the 2001 final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(8) Upon announcement of the 2001 program year contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(9) When the 2002 program year TCDP [~~Texas Community Development Program~~] allocation becomes available, the executive director of the Office [~~department~~] reviews the 2002 program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(10) Upon announcement of the 2002 program year contract awards, the Office [~~department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Office [~~Department~~] and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

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

(3) Project impact (total--175 points).

(A) Each application is scored within a point range based on the application activities. Multi-activity projects which include activities in different scoring ranges will receive a combination score within the possible range. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the Office [~~Department~~] to generate scores on this factor. The point ranges used for project impact scoring are as follows:

(i) - (vii) (No change.)

(B) Other factors that will be evaluated by Office [~~Department~~] staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) - (viii) (No change.)

(4) - (6) (No change.)

§255.3. Young v. Cuomo Fund.

(a) (No change.)

(b) Funding cycle. Funds, not to exceed $2.3 million, are available to eligible cities from the 2001 program year allocation. Applications for funding must be received by the TCDP [~~Texas Community Development Program~~] by the date specified in the application guide for this fund.

(c) Selection procedures.

(1) Prior to the application deadline, each eligible local government may submit one application for funding under the Young v. Cuomo fund. Two copies of the application must be submitted to the Office [~~Department~~] and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office [~~department~~] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not

subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office [~~department~~] prior to final review of the applications.

(4) HUD reviews the activities included in each application, selects the applications that receive funding, and the order in which the applications receive funding recommendations. HUD then notifies the Office [~~department~~] when a funding decision is made.

(5) Following a final technical review, the Office [~~Department~~] staff makes funding recommendations for the applications selected by HUD to the executive director of the Office [~~Department~~].

(6) The executive director of the Office [~~department~~] reviews the recommendations for project awards and, except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(7) Upon announcement of the contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

§255.4. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Office [~~Department~~] have been totally reimbursed by the Office [~~Department~~].

(1) A cash match equal to or greater than 20% of the total TCDP [~~Texas Community Development Program~~] funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total TCDP [~~Texas Community Development Program~~] funds requested is required of all applicants having a population over 1,500 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total TCDP [~~Texas Community Development Program~~] funds requested is required of all applicants having a population over 750 but equal to or less than 1,500, and a cash match equal to or greater than 5% of the total TCDP [~~Texas Community Development Program~~] funds requested is required of all applicants having a population of less than 750. The population of an applicant is based on the 1990 census unless an applicant submits a survey conducted in accordance with §9.1(k) of this title (relating to General Provisions). The percentage of match required from a county applicant is based on the actual target area population benefitting from the proposed planning project. In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide.

(2) (No change.)

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2001 and 2002 program years pursuant to a statewide competition held during the 2001 program year. Applications for funding from the 2001 and 2002 program year allocations must be received by the TCDP [~~Texas Community Development Program~~] by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects is done by staff and a committee composed of Office [~~Department~~] staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) (No change.)

(2) Upon receipt of an application, the Office [~~department~~] staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Office [~~department~~] prior to scoring of the applications.

(4) The Office [~~department~~] staff and the Office [~~department~~] staff committee generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Office [~~department~~] staff committee and Office [~~department~~] staff to generate scores on the planning strategy and products factors.

(5) The Office [~~Department~~] generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce [~~Employment~~] Commission, or from information provided by the applicant.

(6) (No change.)

(7) The Office [~~Department~~] staff submits the 2001 program year and 2002 program year funding recommendations to the state review committee. The state review committee reviews the project rankings and provides funding recommendations to the executive director of the Department.

(8) The executive director of the Office [~~Department~~] reviews the 2001 program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(9) Upon the announcement of the 2001 program year contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. The award is based on the information

provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(10) When the 2002 program year TCDP [~~Texas Community Development Program~~] allocation becomes available, the executive director of the Office [~~department~~] reviews the 2002 program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(11) Upon the announcement of the 2002 program year contract awards, the Office [~~department~~] staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office [~~Department~~] for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

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

(3) Planning strategy and products (total 275 points).

(A) (No change.)

(B) Proposed planning effort (225 points). The factors considered by a committee composed of staff of the Office [~~Department~~] in determining this score are as follows:

(i) - (iv) (No change.)

§255.5. Disaster Relief Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TCDP [~~Texas Community Development Program~~] funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster. Additionally, in disaster relief situations, the TCDP [~~Texas Community Development Program~~] dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office [~~Department~~] for funding of those activities for which assistance from other sources is not available. Assistance under the disaster relief fund is provided only if one of the following has occurred:

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

(b) (No change.)

(c) Selection procedures. As soon as an area qualifies for disaster relief assistance, the Office [~~Department~~] works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where TCDP [~~Texas Community Development Program~~] funds can best be utilized. The Office [~~Department~~] then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(d) - (g) (No change.)

(h) Disaster recovery initiative selection criteria. The following describes the evaluation criteria used by the Office [~~Department~~] to select disaster recovery initiative grantees.

(1) (No change.)

(2) Priority for these funds will be given to eligible applicants that have not already received a TCDP [~~Texas Community Development Program~~] disaster relief grant for activities associated with the occurrence of this disaster.

(3) For any application that includes construction or acquisition activities, the Office [~~Department~~] will consider the applicant's status as a nonparticipating, noncompliant community under the National Flood Insurance Program when prioritizing the selection of the applicants that will receive disaster recovery initiative funds.

§255.6. Urgent Need Fund.

(a) General provision. Assistance under this fund is provided only to eliminate existing water and sewer conditions which pose a serious and immediate threat to the health or welfare of the residents of the applicant where other financial resources are not available to meet such conditions. A unit of general local government that wishes to receive assistance under this fund must submit an application, as provided by the Office [~~Department~~], to the Office [~~Department~~]. There is no application deadline. However, an application for urgent need assistance is not accepted for funding until discussions between the potential applicant and representatives of the Office [~~Department~~] and other state regulatory and funding resource agencies (such as the Texas Natural Resource Conservation Commission and the Texas Water Development Board) have occurred and a determination is made that the potential applicant and the situation meet urgent need fund threshold criteria. An applicant may not submit an application under this fund and also under any other TCDP [~~Texas Community Development Program~~] fund category at the same time if the proposed activity under each application is the same or substantially similar. An applicant may receive one contract award under this fund in any one program year. The Office [~~Department~~] may negotiate the level of funding to be provided to an applicant and the scope of work to be performed by the applicant.

(b) Threshold requirements. In addition to the threshold requirements set forth in §9.1(h) and §9.1(n) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) the condition which gives rise to the application must have occurred or become critical no more than 18 months before the date the application is received by the Office [~~department~~];

(2) (No change.)

(3) the applicant must provide the Office [~~department~~] with evidence that the applicant is unable to finance the proposed activity with local funds and that no other sources of funding are available;

(4) (No change.)

(5) the applicant must provide matching funds equal to 20% of the TCDP [~~Texas Community Development Program~~] urgent need fund application request if the applicant is a city with a population of more than 1,500 persons or if the applicant is a county

and the number of project beneficiaries is more than 1,500 persons; or the applicant must provide matching funds equal to 10% of the TCDP [~~Texas Community Development Program~~] urgent need fund application request if the applicant is a city with a population of equal to or less than 1,500 persons or if the applicant is a county and the number of project beneficiaries is equal to or less than 1,500 persons.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements program, projects may also qualify if they meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

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

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one or more of the following requirements has been met prior to submitting an application for consideration under this section:

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

(C) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA [~~Texas Department of Economic Development~~] before the TCF [~~Texas Capital Fund~~] application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA [~~Texas Department of Economic Development~~] will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA [~~Texas Department of Economic Development~~] will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) With the exception of the main street improvements program, the TDA [~~Texas Department of Economic Development~~] will only consider applications that provide funding for one business.

(10) The TDA [~~Texas Department of Economic Development~~] will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA [~~TDED~~] may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county that the city is located and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A business which is currently being provided assistance from the TCF [~~Texas Capital Fund~~] must create at least 50 permanent jobs in each additional proposed TCF [~~Texas capital fund~~] project in order for such project to be considered for funding.

(12) A TCF [~~Texas Capital Fund~~] contractor must satisfactorily close out a contract in support of a specific business or main street improvements project in order to be eligible to receive additional funds under the TCF [~~Texas Capital Fund~~] for the same business or main street city. The contractor is eligible for an additional TCF [~~Texas Capital Fund~~] award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street geographic area or if the main street project selected the elimination of slums and blight as its national program objective and the assisted business will create or retain jobs to meet the national program objective.

(13) The TDA [~~Texas Department of Economic Development~~] will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF [~~Texas Capital Fund~~] assistance through that same community.

(14) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF [~~Texas Capital Fund~~] infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $4,500,000 in total awards during the program year, unless a jumbo award is deobligated during the program year, in which case another jumbo award, of up to $1,500,000, may be awarded as a replacement. Additionally, no more than $3,000,000 in jumbo awards will be approved in either of the first two rounds. The maximum amount for a jumbo award is $1.5 million and the minimum award amount is $750,001. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA [~~TDED~~] and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(15) TDA [~~TDED~~] will allocate the available funds for the year, less $600,000 for the Main Street program, as follows:

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

(b) (No change.)

(c) Application Dates. The TCF [~~Texas Capital Fund~~] (except for the Main Street Program) is available three times during the year, on a competitive basis, to eligible applicants statewide. Applications for the Main Street Program are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefitting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA [~~TDED~~] has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA [~~TDED~~] and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the first month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Office [~~department~~] is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) (No change.)

(e) Application process for the infrastructure and real estate programs. The TDA [~~Texas Department of Economic Development~~] will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA [~~TDED~~] executive director. TDA [~~TDED~~] executive director makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's [~~TDED's~~] Trade and Investment Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA [~~TDED~~] staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA [~~TDED~~] staff reviews scores for validity and ranks them in descending order.

(3) TDA [~~TDED~~] staff will then review the applications for eligibility and completeness in descending order based on the scoring. In those instances where the staff determines that the application has 12 or less deficiencies on the Application Checklist, unless an extension is granted, the applicant will be given 10 business days to rectify all deficiencies. An application containing more than 12 deficiencies will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA [~~TDED~~] staff then conducts a review of each complete application to make threshold determinations with respect to:

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

(C) Whether the use of TCF [~~Texas Capital Funds~~] is appropriate to carry out the project proposed in the application;

(D) - (E) (No change.)

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCDP [~~Texas Community Development Program~~] funds.

(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC). Proposals submitted for funding under the TCF [~~Texas Capital Fund~~] require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the staff provided, such comments are received by the staff prior to a recommendation to management.

(6) Upon TDA [~~TDED~~] staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(7) The TDA [~~TDED~~] staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner [~~TDED's executive director~~].

(8) The TDA Commissioner [~~TDED executive director~~] reviews the recommendation and announces the final decision.

(9) The TDA [~~TDED's~~] staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA [~~TDED~~] staff may negotiate some elements of the final contract agreement with the recipient.

(10) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA [~~TDED~~], the contract will be fully executed by the TDA Commissioner [~~executive director~~] and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) (No change.)

(2) Depending on availability of funds, TDA [~~TDED~~] may elect not to make jumbo awards in program year 2001 after the April 30, 2001 round of applications.

(3) - (4) (No change.)

(5) Business Emphasis (maximum 20 points).

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

(C) HUB--Historically Underutilized Business (maximum 5 Points). Awarded if a business is certified by the state Texas Building and Procurement Commission (TBPC) [~~General Services~~

~~Commission (GSC)~~] as a Historically Underutilized Business (HUB). Provide a copy of TBPC's [~~GSC's~~] certification in the application.

(6) (No change.)

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA [~~TDED~~] staff will consider a business to have been operating for at least three years if:

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

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA [~~TDED~~] staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) (No change.)

(3) TDA [~~TDED~~] staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. Applications with 13 or more deficiencies will be considered ineligible. If that occurs than the next highest ranking application will be substituted. In those instances where the staff determines that the application has 12 or less deficiencies on the Application Checklist, unless an extension is granted, the applicant will be given 10 business days to rectify all deficiencies. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA [~~TDED~~] staff then conducts a review of each complete application to make threshold determinations with respect to:

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

(C) Whether the use of the TCF [~~Texas Capital Funds~~] is appropriate to carry out the project proposed in the application;

(D) (No change.)

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCDP [~~Texas Community Development Program~~] funds.

(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC). Proposals submitted for funding under the TCF [~~Texas Capital Fund~~] require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by THC and TDA [~~TDED~~] provided, such comments are received by TDA [~~TDED~~] prior to a recommendation to management.

(6) Upon TDA [~~TDED~~] staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by THC and TDA [~~TDED~~] staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(7) TDA [~~TDED~~] staff prepares a project report with recommendations (for approval or denial) for credit committee and then credit committee makes a recommendation to TDA's [~~TDED's~~] executive director for the final decision.

(8) TDA [~~TDED~~] executive director reviews the recommendation and announces the project selected for funding.

(9) TDA [~~TDED~~] staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA [~~TDED~~] staff may negotiate some elements of the final contract agreement with the recipient.

(10) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, unless an extension is granted, award recipient has 30 days to review and execute both copies. Once returned to TDA [~~TDED~~], the contract will be fully executed by the executive director and then a single copy is returned to contractor.

(i) (No change.)

(j) Threshold criteria for the main street improvements program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

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

(3) Main street designation. The applicant must be designated by the THC [~~Texas Historical Commission~~] as a Main Street City prior to submitting a TCF [~~Texas Capital Fund~~] application for main street improvements.

§255.8. Regional Review Committees.

(a) (No change.)

(b) Role. Each regional review committee reviews and scores all applications submitted from within its region under the community development fund. Each regional review committee may review and comment on other TCDP [~~Texas Community Development Program~~] applications. Each regional review committee sends its scores and comments to the Office [~~department~~]. Regional review committees may elect to utilize staff of regional planning commissions to assist with project review responsibilities.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TCDP [~~Texas Community Development Program~~].

(1) (No change.)

(2) Conflicts of interest. No member of a regional review committee shall vote on an application if the member is on the governing body of the applicant or in cases where that member has a personal

or pecuniary interest as defined under state law. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee. A regional review committee member may not discuss any application, including the scoring of any application that the member is allowed to score, with any person that may benefit from an award of TCDP [~~Texas Community Development Program~~] funds to such application. If a regional review committee member discusses an application with any person that may benefit from an award of TCDP [~~Texas Community Development Program~~] funds to such application, the regional review committee member shall abstain from the scoring of that application.

(3) (No change.)

(4) Scoring procedures. Each regional review committee must submit its scoring procedures to the Office [~~department~~] for approval before the procedures are disseminated to all eligible applicants in its region.

(d) Appeals. An applicant may appeal the actions of the regional review committee established in its state planning region by following the procedures set forth in this subsection. The department will withhold the running of computer scores on community development fund applications for five working days after the regional review committee's scoring meeting or until all regional appeals, if any, have been resolved, whichever is longer. A regional review committee must provide written notification of each appeal to all applicants in the region. An applicant that is adversely affected by the action of its regional review committee on an appeal, may appeal that action in accordance with the procedures specified in this subsection.

(1) (No change.)

(2) Within 10 working days after the receipt of an appeal, the regional review committee shall notify all the applicants within its region that the regional review committee will reconvene to hear the appeal. If a quorum of the regional review committee agrees that the alleged procedural violation occurred, the regional review committee shall sustain the appeal, make appropriate adjustments to regional scores, and notify the Office [~~department~~]. If a quorum of the regional review committee votes to deny the appeal, the regional review committee shall provide all applicants in the region and the Office [~~department~~] with a written statement of the basis of its denial.

(3) If the appeal is resolved, the Office [~~department~~] runs the computer scores and provides funding recommendations to the state review committee.

(4) If the appeal is not resolved, the Office [~~department~~] prepares an appeal file for the state review committee. The file includes:

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

(C) Office [~~department~~] staff reports; and

(D) (No change.)

(5) The state review committee shall make one of the following recommendations to the executive director of the Office [~~department~~]:

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

§255.9. Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under any other TCDP [~~Texas Community Development Program~~] fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) (No change.)

(3) Eligibility for the Office's [~~Department's~~] colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities located in those counties, that are eligible under the TCDP Colonia Fund and Texas Water Development Board's EDAP [~~Economically Distressed Areas Program~~]. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) (No change.)

(b) Eligible activities. The only eligible activities under the colonia fund are:

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

(5) For the Office's [~~Department's~~] colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. The eligible activities are water or sewer connection fees, water or sewer taps, water meters, water or sewer yard service lines, plumbing improvements associated with the provision of water or sewer service to an occupied housing unit, water or sewer house service connections, reasonable associated administrative costs, and reasonable associated engineering costs.

(c) Types of applications. Eligible applicants may submit one application for the colonia EDAP fund, the colonia construction fund and the colonia planning fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Office [~~Department~~] may not submit another application for colonia comprehensive planning fund assistance.

(d) Funding cycle. The colonia construction fund and the colonia planning fund are allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Office [~~Department~~] by the dates and times specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, Section 2306.582, Government Code, and/or counties designated as economically distressed areas under Chapter 17, Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction fund, for colonia comprehensive planning, and for colonia area planning. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program. Copies of the application must be provided to the applicant's regional planning commission and the Office [~~Department~~].

(2) Upon receipt of an application, the Office [~~department~~] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office [~~department~~] prior to scoring of the applications.

(4) The Office [~~Department~~] then scores the colonia construction fund and colonia planning fund applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office [~~Department~~] evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Office [~~Department~~] staff makes funding recommendations to the executive director of the Office [~~Department~~].

(6) The executive director of the Office [~~Department~~] reviews the final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(7) Upon announcement of contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Office [~~Department~~] for scoring colonia construction fund applications. Four hundred forty points are available.

(1) (No change.)

(2) Benefit to low and moderate income persons (total--50 points). To determine the percentage of TCDP [~~Texas Community Development Program~~] funds benefitting low to moderate income persons, the number equal to the percentage of low to moderate income persons benefitting from the proposed project multiplied by the amount of TCDP [~~Texas Community Development Program~~] funds requested for construction activities is divided by the total amount of TCDP [~~Texas Community Development Program~~] funds requested. Points are awarded based on the percentage of TCDP [~~Texas Community Development Program~~] funds benefitting low to moderate income persons in accordance with the following scale:

(A) - (E) (No change.)

(3) Project priorities (total--195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TCDP [~~Texas Community Development Program~~] funds requested minus the TCDP [~~Texas Community Development Program~~] funds requested for engineering and administration, a percentage of the total TCDP [~~Texas Community Development Program~~] construction dollars for each activity is calculated. The percentage of the total TCDP [~~Texas Community Development Program~~] construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(A) - (G) (No change.)

(4) Project design (total--135 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. Each application is scored by a committee composed of TCDP [~~Texas Community Development Program~~] staff using the following information submitted in the application:

(A) (No change.)

(B) the TCDP [~~Texas Community Development Program~~] cost per low to moderate income beneficiary;

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

(G) the applicant's past performance on prior TCDP [~~Texas Community Development Program~~] contracts;

(H) (No change.)

(I) whether the applicant's proposed use of TCDP [~~Texas Community Development Program~~] funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program; and

(J) (No change.)

(g) Selection criteria (colonia area planning fund). The following is an outline of the selection criteria used by the Office [~~Department~~] for scoring applications for eligible planning activities under this fund. Three hundred fifty points are available.

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

(3) Project design (total--250 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. Each application is scored by a committee composed of TCDP [~~Texas Community Development Program~~] staff using the following information submitted in the application:

(A) - (E) (No change.)

(F) the TCDP [~~Texas Community Development Program~~] cost per low to moderate income beneficiary;

(G) - (H) (No change.)

(I) the applicant's past performance on prior TCDP [~~Texas Community Development Program~~] contracts.

(h) Selection criteria (colonia comprehensive planning fund). The following is an outline of the selection criteria used by the Office [~~Department~~] for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(1) (No change.)

(2) Project design (total--175 points). Each application is scored by a committee composed of Department staff using the following information submitted in the application:

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

(D) the applicant's past performance on previously awarded TCDP [~~Texas Community Development Program~~] contracts.

(i) Program guidelines (colonia self-help centers fund). The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Office [~~Department~~]. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Office [~~Department~~] has the authority to make changes to the colonias designated for this concentrated attention.

(2) The Office's [~~Department's~~] grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TCDP [~~Texas Community Development Program~~]. The advisory committee shall advise the Office [~~Department~~] regarding:

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

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) - (I) (No change.)

(J) providing other eligible services that the self-help center, with the Office's [~~Department~~] approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area; and

(K) (No change.)

(5) (No change.)

(j) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of the Office's [~~Department~~] staff.

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

§255.10. Housing Fund.

(a) General provisions. Two separate fund categories are available under the housing fund. The housing infrastructure fund is available for public facilities and infrastructure improvements supporting the development and construction of single family and multifamily low to moderate income housing. The housing infrastructure funds may not be used for the actual construction cost of new housing. The housing rehabilitation fund is available for the rehabilitation or existing owner-occupied and renter-occupied housing units and, in strictly limited circumstances, the construction of new housing that is accessible to persons with disabilities. The housing rehabilitation fund selection criteria places emphasis on housing activities that provide accessible housing for persons with disabilities.

(1) An applicant may not submit an application under this fund and also under any other TCDP [~~Texas Community Development Program~~] fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) (No change.)

(3) In order to meet a national program objective under the housing infrastructure fund, at least 51% of the housing units built in conjunction with each housing infrastructure fund project must be occupied by low to moderate income persons. In the case of a rental housing construction project, occupancy by low to moderate income persons must be at affordable rents. TCDP [~~Texas Community Development Program~~] funds can be used to finance 100% of the eligible project costs when at least 51% of the units are occupied by low to moderate income persons.

(4) There is only one type of housing infrastructure fund project that may qualify for assistance when less than 51% of the units will be occupied by low to moderate income persons. Eligible assistance may also be provided to reduce the cost of new construction of a multifamily non-elderly rental housing project. However, at least 20% of the units must be occupied by persons of low to moderate income at affordable rents. For this type of project, the maximum percentage of TCDP [~~Texas Community Development Program~~] funds available for the eligible project costs is equal to the percentage of the project's units that are occupied by persons of low to moderate income at affordable rents.

(5) (No change.)

(b) (No change.)

(c) Funding cycle (housing infrastructure fund). This fund is allocated on an annual basis to eligible units of general local government through a statewide competition. Applications for funding must be received by the TCDP [~~Texas Community Development Program~~] by the application deadline date or dates specified in the application guide for this fund.

(d) (No change.)

(e) Funding cycle (housing rehabilitation fund). This fund is allocated to eligible units of general local government on a biennial basis for the 2001 and 2002 program years pursuant to a statewide competition held during the 2001 program year. Applications for funding from the 2001 and 2002 program year allocations must be received by the TCDP [~~Texas Community Development Program~~] by the dates and times specified in the most recent application guide for this fund.

(f) Selection procedures (housing rehabilitation fund).

(1) Each eligible local government may submit one application for funding under the housing rehabilitation fund. Two copies of the application must be submitted to the Office [~~Department~~] and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office [~~Department~~] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office [~~Department~~] staff in the timeframe stated in the notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office [~~Department~~] prior to final review of an application.

(4) The Office [~~Department~~] then scores the housing rehabilitation fund to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Office [~~Department~~] staff submits the 2001 program year and 2002 program year funding recommendations to the executive director of the Office [~~Department~~].

(6) The executive director of the Office [~~department~~] reviews the 2001 program year funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(7) Upon announcement of the 2001 program year contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2002 program year TCDP [~~Texas Community Development Program~~] allocation becomes available, the executive director of the Office [~~Department~~] reviews the 2002 program year final recommendations for project awards and announces the contract awards.

(9) Upon announcement of the 2002 program year contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(g) Selection criteria (housing rehabilitation fund). The following is an outline of the selection criteria used by the Office [~~Department~~] for scoring applications under this fund. Two hundred points are available.

(1) (No change.)

(2) Project design (total--175 points). Each application is scored by a committee composed of Department staff using the following information submitted in the application:

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

(D) the applicant's past performance on previously awarded TCDP [~~Texas Community Development Program~~] contracts.

(h) Selection procedures (housing infrastructure fund.

(1) Each eligible local government may submit one application for funding under the housing infrastructure fund. Two copies of the application must be submitted to the Office [~~Department~~] and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, TCDP [~~Texas Community Development Program~~] staff and Credit Division staff review the application to determine whether it is complete, if all proposed activities are program eligible, and if the project is financially feasible. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office [~~Department~~] staff in the timeframe stated in the notification.

(3) After review by Office [~~Department~~] staff, each application is evaluated by a team of reviewers. Reviewer's scores are averaged for a final team score and applications recommended for funding are forwarded to the executive director of the Office [~~Department~~].

(4) The executive director forwards the recommended applications to the Office's [~~Department's~~] Board for final approval. If approved by the Office's [~~Department's~~] Board, the executive director except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000.00 are submitted to the Executive Committee for its review and comments at its next regularly scheduled committee meeting. When the Executive Committee has questions or suggestions concerning the proposed awards the executive director provides responses to the Executive Committee at the following Executive Committee meeting.

(5) Upon announcement of the contract awards, the Office [~~Department~~] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office [~~Department~~] may negotiate any element of the contract with the recipient as long as the contract amount is not

increased and the level of benefits described in the application is not decreased.

(i) Selection criteria (housing infrastructure fund). The following is an outline of the selection criteria used by the Office [~~Department~~] for scoring applications under this fund. One hundred sixty-five points are available.

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

(j) (No change.)

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program. The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

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

(3) Cities and counties submitting 1999 community development fund applications that do not include water, sewer, or housing activities are not eligible to receive a 1999 or 2000 grant award from this fund. However, the Office [~~Department~~] may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 1999 or 2000 community development fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(4) Cities and counties submitting 2001 community development fund applications that do not include water, sewer, or housing activities are not eligible to receive a 2001 or 2002 grant award from this fund. However, the Office [~~Department~~] may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2001 or 2002 community development fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Funding cycle. This fund is available to eligible units of general local government through a direct award basis. There is no application deadline. However, an application for small towns environment program fund assistance is not accepted until TCDP [~~Texas Community Development Program~~] staff, representatives of the potential applicant, and residents from the community needing the financial assistance have discussed the self-help process and TCDP [~~Texas Community Development Program~~] staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project.

(c) Selection procedures. TCDP [~~Texas Community Development Program~~] staff will provide guidance, assistance, and support to community leaders and residents willing to use self-help to solve their water and sewer problems. Staff will determine a community's readiness to begin a self-help project through evaluation of the following factors:

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

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

Filed with the Office of the Secretary of State on September 4, 2002.

TRD-200205819
Robt. J. "Sam" Tessen, MS
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 936-6776

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SUBCHAPTER B. CONTRACT ADMINISTRATION

10 TAC §255.41

The Office of Rural Community Affairs proposes an amendment to §255.41 concerning the review of grant applications.

This section contains uniform administrative requirements for the Texas Community Development Program (TCDP).

The executive committee will review grant applications exceeding $300,000.00 excluding the Texas Capital Fund.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications to state and local governments as a result of administering the sections as proposed.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office has determined that the public benefit anticipated is the resolution of issues for major grant awards. There will be no adverse effect on any small business or micro-business. There are no anticipated economic costs to persons who are required to comply with these sections. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877 1708, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the agency's responsibilities.

The amendment affects Chapter 487 of the Government Code.

§255.41. Uniform Administrative Requirements.

(a) Purpose. The purpose of this section is to establish variations from the uniform grant and contract management standards (UGCMS) adopted by the Office of the Governor in 1 TAC §§5.141 - 5.167.

(b) Applicability. This section applies to all units of general local government, as defined in 42 United States Code §5302(a)(1), which apply for, or are awarded a contract under the TCDP [~~Texas Community Development Program (TCDP)~~].

(c) Variations.

(1) The federal laws and regulations specified in the Housing and Community Development Act of 1974, as amended (42 United States Code §§5302 et seq.) and federal Community Development Block Grant (CDBG) Program regulations in 24 Code of Federal Regulations, Part 58, concerning federal laws and regulations with which nonentitlement area CDBG recipients are required to comply, constitute additional assurances under the UGCMS with which TCDP recipients must comply.

(2) Beginning with the expenditure of federal fiscal year 1984 CDBG funds, the provisions of Public Law 98-181, §106(i), (November 30, 1983) constitute additional assurances under the UGCMS with which TCDP applicants and recipients must certify they will comply.

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 September 5, 2002.

TRD-200205830
Robt. J. "Sam" Tessen, MS
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 936-6710

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 76. EXTRACURRICULAR ACTIVITIES

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §76.1001

The Texas Education Agency (TEA) proposes an amendment to §76.1001, concerning extracurricular activities. The section establishes definitions, requirements, and procedures for participation in and practice for extracurricular activities during the school day and school week. The proposed amendment is non-substantive in nature and is intended to update reference from the Texas Assessment of Academic Skills (TAAS) to the statewide assessment program.

In accordance with Texas Education Code, §7.055(b)(41), the commissioner of education adopts rules related to extracurricular activities. In 19 TAC §76.1001, the commissioner of education recommends that a school district avoid the scheduling of extracurricular activities or public performances to occur on the day or evening immediately preceding the day on which the administration of the TAAS is scheduled. This rule allows districts to schedule extracurricular activities the day or evening immediately preceding the statewide administration of the TAAS; however, the commissioner asks districts to consider any possible negative impact that these activities might have on student performance before doing so.

The statewide assessment program has changed from the TAAS to the Texas Assessment of Knowledge and Skills (TAKS). The proposed amendment to 19 TAC §76.1001 replaces reference to the TAAS in subsection (d)(4) with "statewide student assessment program" in order to avoid amending the rule with each change of the assessment program. The amendment also updates reference to applicable grade levels.

Ed Flathouse, associate commissioner for finance and support systems, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

Mr. Flathouse has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be the update of the reference to the current statewide student assessment program. The update allows districts to continue to apply this provision to the new statewide assessment program. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code (TEC), §7.055(b)(41), which authorizes the commissioner to adopt rules relating to extracurricular activities under §33.081.

The amendment implements the Texas Education Code, §7.055(b)(41).

§76.1001. Extracurricular Activities.

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

(d) Limitations on practice, rehearsal, and student participation in extracurricular activities during the school week shall be as follows.

(1) For any given extracurricular activity, a student may not participate in more than one activity per school week, excluding holidays, except as provided in paragraph (2) of this subsection.

(2) In addition to the limit specified in paragraph (1) of this subsection of one extracurricular activity permitted per school week, a student may also participate in a tournament or post-district contest, as well as a contest postponed by weather or public disaster that may determine advancement to a post-district level of competition.

(3) For each extracurricular activity, a school district must limit students to a maximum of eight hours of practice and rehearsal outside the school day per school week.

(4) The commissioner of education recommends that [~~a~~] school districts avoid [~~district avoids the~~] scheduling [~~of~~] extracurricular activities or public performances [~~to occur~~] on the day [~~immediately preceding~~] or evening immediately preceding the day on which the administration of the statewide student assessment program [~~Texas Assessment of Academic Skills (TAAS) test~~] is scheduled for Grades 3-11 [~~3-8 and 10~~].

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

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

Filed with the Office of the Secretary of State on September 9, 2002.

TRD-200205882
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 463-9701

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CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1015, §100.1017

The Texas Education Agency (TEA) proposes an amendment to §100.1015 and new §100.1017, concerning open-enrollment charter schools. Section 100.1015 specifies provisions relating to applicants for an open-enrollment charter. The proposed amendment to §100.1015 and proposed new §100.1017 clarify the applicability of existing rule and statute to public senior college or university charter schools.

House Bill (HB) 6, 77th Texas Legislature, 2001, allows the State Board of Education to grant open-enrollment charters to public senior colleges or universities under different conditions than other open-enrollment charters. Texas Education Code (TEC), §12.153, added by HB 6, 77th Texas Legislature, 2001, authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Charters, Subchapter E, College or University Charter School. The agency will accept public senior college and university charter applications at any time. Other open- enrollment charter applications are accepted only during specified periods.

19 TAC §100.1015 requires applicants to demonstrate compliance with rules concerning open-enrollment charter schools. The proposed amendment to this section would add wording to include applicability to a public senior college or university charter. Proposed new 19 TAC §100.1017 would clarify the applicability of existing rule and statute to this new category of open-enrollment charter schools.

Susan Barnes, assistant commissioner for charter schools, has determined that for the first five-year period the amendment and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment or new section.

Ms. Barnes has determined that for each year of the first five years the amendment and new section are in effect the public benefit anticipated as a result of enforcing the amendment and new section will be that open-enrollment charter schools provide the public with choices among public schools and innovation in education programs throughout the state and the proposed rule actions allow for a new category of highly accountable charter schools. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendment and new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment and new section are proposed under the Texas Education Code (TEC), §12.153, as added by HB 6, 77th Texas Legislature, 2001, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Charters, Subchapter E, College or University Charter School.

The amendment and new section implement the Texas Education Code, §12.153, as added by HB 6, 77th Texas Legislature, 2001.

§100.1015. Applicants for an Open-Enrollment Charter or Public Senior College or University Charter.

Applicants for an open-enrollment charter or a public senior college or university charter shall demonstrate compliance, or the capacity to operate in compliance, with the provisions of this subchapter.

§100.1017. Application to Public Senior College or University Charters.

Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school as though the public senior college or university charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

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 September 9, 2002.

TRD-200205883
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§141.2, 141.3, 141.6 - 141.8, 141.13, 141.14, 141.17, 141.21, 141.23, 141.24

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) proposes amendments to §§141.2, 141.3, 141.6, 141.7, 141.8, 141.13, 141.14, 141.17, 141.21 and new §§141.23 and 141.24 concerning the licensure and regulation of fitters and dispensers of hearing instruments. Specifically the amendments cover the definition of specific product, nondiscrimination, fees, number of temporary training permit and apprentice permit holders a licensed fitter and dispenser of hearing instruments may supervise, continuing education sponsors, surrender of license because of student loan default, suspension of a license for failure to be in compliance with child custody orders, and editorial changes. The new §§141.23 and 141.24 add language concerning relevant factors, severity levels and a sanction guide to be used by the complaint subcommittee when considering disciplinary action.

The amendments and new sections are pursuant to statutorial changes made to the Texas Occupations Code, Chapter 402, during the 77th Legislative Session, 2001. These amendments and new sections require the addition of a definition of specific product; that genetic information not be used in the discharge of statutory authority; the addition of continuing education sponsor fees; continuing education sponsors will be required to renew annually; licensed fitters and dispensers may supervise two temporary training and two apprentice permit holders at one time; licenses will be surrendered in cases of student loan defaults, suspended for noncompliance with child custody orders; a reinstatement fee must be paid; and add relevant factors, severity levels and sanctions available for use in disciplinary actions.

Bobby D. Schmidt, Executive Director, for the committee, has determined that for each year of the first five-year period the sections will be in effect, there will be an impact on state government as a result of enforcing or administering the sections as proposed. There will be an increase in general revenue to the state estimated to be $975 in Fiscal Year 2003, $3250 in Fiscal Year 2004, $3500 in Fiscal Year 2005, $4000 in Fiscal Year 2006, and $4000 in Fiscal Year 2007. There will be no fiscal implications for local government.

Mr. Schmidt also has determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to insure the appropriate regulation of fitters and dispensers of hearing instruments. There is no anticipated cost to micro or small businesses or persons who are required to comply with the sections as proposed unless the micro or small businesses or persons are continuing education sponsors. An increase in cost will affect individuals who default on their student loans or are noncompliant with child custody orders, and are required to pay a $50 reinstatement fee. Continuing education sponsors will renew every year instead of every five years and pay a $50 continuing education sponsor fee. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6784. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments and new sections are proposed under Texas Occupations Code, Chapter 402, which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments with the authority to adopt rules concerning the regulation of fitters and dispensers of hearing instruments.

The amendments and new sections affect the Texas Occupations Code, Chapter 402.

§141.2. Definitions.

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

(1) - (23) (No change.)

(24) Specific Product - Specific product shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(25) [~~(24)~~] Sponsor - Provider of a continuing education activity.

(26) [~~(25)~~] Supervisor - A supervisor is a person licensed by the committee as a licensed hearing instrument dispenser who:

(A) meets the qualifications established by Texas Occupations Code, §402.255 and this chapter;

(B) has an established place of business;

(C) is responsible for direct and indirect supervision and available for consultation and education of a temporary training permit holder; or

(D) is responsible for indirect supervision and available for consultation of an apprentice permit holder.

(27) [~~(26)~~] Temporary training permit - A permit issued by the committee to persons authorized to fit and dispense hearing instruments only under the direct or indirect supervision as appropriate of a person who holds a license under Texas Occupations Code, Chapter 402, and this chapter.

(28) [~~(27)~~] Working days - Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(29) [~~(28)~~] Written contract for services - A written agreement or bill of sale, between the licensee and purchaser of a hearing instrument as set out in §141.16(c) of this title (relating to Conditions of Sale).

(30) [~~(29)~~] 30-day trial period - The period in which a person may cancel the purchase of a hearing instrument.

§141.3. The Committee.

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

(l) Nondiscrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

(m) [~~(l)~~] Applicants with disabilities.

(1) The committee shall comply with the Americans with Disabilities Act.

(2) Applicants with disabilities shall inform the committee 30 days in advance of any special accommodations needed.

§141.6. Application Procedures.

(a) - (d) (No change.)

(e) The fees for administering Texas Occupations Code, Chapter 402, (Act), and this chapter shall be as follows:

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

(6) duplicate document fee - $25; [~~and~~]

(7) continuing education sponsor fee - $50 annually;

(8) [~~(7)~~] reinstatement fee for a license that was suspended for failure to pay child support - $50; and

(9) reinstatement fee for a license that was suspended for student loan default - $50.

§141.7. Processing Procedures.

Committee staff shall comply with the following procedures in processing applications for a temporary training permit, apprentice permit, license, and renewal of a regular license.

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

(4) The materials required for application are as follows:

(A) Application form. The application form shall contain:

(i) (No change.)

(ii) a statement that the applicant has read Texas Occupations Code, Chapter 402 [~~Texas Civil Statutes, Articles 4566-1.01 et seq~~] (Act), and this chapter and agrees to abide by them;

(iii)-(iv) (No change.)

(v) a statement that the applicant understands that new material [~~materials~~] submitted to the committee become the property of the committee and are not returnable (unless prior arrangements have been made);

(vi) - (ix) (No change.)

(B) Supervised experience form. The supervised experience forms must be completed by the temporary training permit holder and the supervisor or supervisors and contain:

(i) - (iii) (No change.)

(iv) the inclusive dates and types of supervised experience and the total number of hours of supervised experience;

(v) - (vi) (No change.)

(C) Education records. Applicants must submit:

(i) (No change.)

(ii) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained.

(D) (No change.)

(5) Applications may be denied as follows.

(A) The committee may deny an application if the applicant:

(i) has not completed the requirements of [~~in~~] this section;

(ii) has failed to remit any applicable fees required [~~in~~] by §402.106 [~~§12~~] of the Act;

(iii) (No change.)

(iv) has been or is in violation of the Act, or any other applicable provision of this chapter;

(v) - (vi) (No change.)

(B) If after review the executive director determines that the application should be denied, the executive director shall ask the applications subcommittee to review [~~renew~~] the application. The applications subcommittee shall take one of the following actions.

(i) - (ii) (No change.)

§141.8. Issuance of Permits.

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

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) A supervisor may not supervise more than two permit holders of each type [~~of any type~~] at one time.

(2) (No change.)

§141.13. Renewal of License.

(a) General.

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

(9) A licensee or permit holder who has been notified of a student loan default shall surrender their license or permit until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(10) A licensee or permit holder shall pay a reinstatement fee as set out in §141.6 of this title (relating to Application Procedures) prior to issuance of the license or permit under this subsection.

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

§141.14. Continuing Education Requirements.

(a) - (h) (No change.)

(i) Requests for credit. Individuals and organizations may initiate requests for committee approval and hour credit of specific programs for continuing education credit at least 30 days prior to the first scheduled presentation.

(1) (No change.)

(2) The committee is responsible for approving individual continuing education courses. The committee may approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The committee shall grant approval to organizations who pay the continuing education sponsor fee which shall permit the organizations to provide continuing education units for their fitting and dispensing of hearing instrument courses, seminars and conferences. Any organization or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed fitters and dispensers of hearing instruments.

(3) [~~(2)~~] Sponsors may initiate their own requests and when approval is obtained, shall announce, prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the committee. When approval is requested by a sponsor, the sponsor shall provide each participant [~~participate~~] with written documentation of participation which shall set forth that participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the committee, and the signature of the sponsor.

(4) Sponsors shall pay a continuing education sponsor fee as set out in §141.6 of this title (relating to Application Procedures) which will be effective for one year from date of receipt.

(j) - (o) (No change.)

§141.17. Complaints and Violations.

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

(d) [~~(c)~~] Suspension, temporary suspension, probation, denial or revocation of a license or permit, or reprimand of a licensee or permit holder.

(1) If the committee suspends a license or permit, the suspension shall remain in effect for the period of time stated in the order or until the committee determines that the reason for the suspension no longer exists.

(2) If a suspension overlaps a license renewal date, the suspended fitter and dispenser of hearing instruments shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (1) of this subsection.

(3) Upon revocation of suspension of a license or permit, a licensee or permit holder shall return his or her license certificate or permit to the committee.

(e) [~~(f)~~] Default orders.

(1) If the right to a hearing is waived under subsection (a) of this section, the committee shall consider an order taking disciplinary action as described in written notice to the licensee, permit holder, or applicant.

(2) The licensee, permit holder, or applicant and the complainant shall be notified of the date, time, and place of the committee meeting at which the default order will be considered.

(3) Upon an affirmative majority vote, the committee shall enter an order imposing appropriate disciplinary action.

(f) [~~(g)~~] Monitoring of licensees.

(1) The executive director shall maintain a complaint tracking system.

(2) The committee may require each licensee, permit holder, or applicant that has had disciplinary action taken against his or her license or permit to submit regularly scheduled reports. The report, if required, shall be scheduled at intervals appropriate to each individual situation.

(3) The executive director shall review the reports and notify the complaints subcommittee if the requirements of the disciplinary action are not met.

(4) The complaint subcommittee may consider more severe disciplinary proceedings if noncompliance occurs.

§141.21. Suspension of License for Failure to Pay Child Support or Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) has issued a license to the obligator [~~obligor~~] named on the order, and, if a license has been issued:

(1) (No change.)

(2) report the suspension as appropriate; [~~and~~]

(3) demand surrender of the suspended license; and

(4) require payment of the child support obligation and demand compliance with a child custody order.

(b) - (h) (No change.)

§141.23. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaint subcommittee or administrative law judge. Specific factors are to be considered as set forth herein.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm, such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed or exposed to harm;

(C) the moral culpability of the licensee, such as whether the violation was:

(i) intentional or premeditated;

(ii) due to blatant disregard or gross neglect; or

(iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences the lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission of wrong or error, and acceptance of responsibility;

(B) appropriate degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violation by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

§141.24. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §141.23 of this title (relating to Relevant Factors).

(1) Level One - revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or may require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two - extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require may termination of licensure for a period of not less than one year.

(3) Level Three - moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four - probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five - reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety and welfare of the public.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205839
Michael Shobe
Chairman
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.5

The Texas Optometry Board proposes amendments to §280.5 in order to incorporate changes made by the Texas State Board of Pharmacy regarding dispensing instructions to pharmacies on product substitution. Amendments by the Pharmacy Board to 22 TAC §309.3 have been incorporated into §280.5 so that licensees of the Board may be in compliance with the Texas Pharmacy Act.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that public will receive from their pharmacists the drugs as prescribed by their therapeutic optometrist. It has also been determined that the amendments will not impose any additional costs to the persons affected by the rule since existing prescription forms may still be used. No additional costs are foreseen for small or micro business.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and the Texas Pharmacy Act §562.015. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession and §562.015 as authorizing the board to direct licensees on how to follow statutory dispensing directives for the communication of substitution instructions to pharmacists.

No other sections are affected by the amendments.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.

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

(d) The prescribing therapeutic optometrist issuing oral prescription drug orders shall furnish the same information required for a written prescription, except for the written signature. If the therapeutic optometrist does not clearly indicate that the prescription drug shall be dispensed as ordered by writing across the face of the written prescription, in the therapeutic optometrist's own handwriting, the phrase "brand necessary" or "brand medically necessary," [,] the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act and §309.3 of this title.

(e) - (j) (No change.)

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205856
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 305-8500

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 1. TEXAS BOARD OF HEALTH
SUBCHAPTER G. CLINICAL HEALTH SERVICES

25 TAC §1.91

The Texas Department of Health (department) proposes an amendment to §1.91 concerning fees for clinical health services.

The proposed amendment to §1.91 affects clinics operated by the department's public health regions and also department contractors that provide health services directly to eligible clients. The amendment deletes the current requirement that the department publish in the *Texas Register* poverty income guidelines distributed annually by the United States Department of Health and Human Services and a schedule of fees for services provided to clients whose eligibility is based on the poverty guidelines. The proposed amendment also deletes internal operating procedures as well as several provisions of Health and Safety Code, §12.032 that are restated in the section.

Because some of the department's health care service delivery programs distribute different versions of the poverty guidelines and fee schedules to public health regions at different times during the year, the proposed amendment should eliminate confusion and increase the consistency and quality of client eligibility determinations. The amendment requires compliance with standard policies and operating procedures being developed for inclusion in the department's Administrative Policy Manual.

Lee Johnson, Director, Financial Management Division, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed because neither the income levels at which fees are charged nor the dollar amounts of the fees charged by the department's public health regions have been changed. Further, the department's contractors, including local governments, remain able to decide whether or not to charge fees for personal health services. Contractors that choose to charge fees retain them, but only for the purpose of increasing the services they can provide to other clients.

Mr. Johnson has also determined that for the first five years the section is in effect, the public benefit anticipated is standardized application of poverty guidelines for the department's regional clinics and contractors, and the clients they serve. There will be no impact on small businesses or micro-businesses to comply with this section as proposed. Small businesses and micro-businesses will not be required to alter business practices to comply with the rule as proposed. Since there is no change to the current fee schedule, there are no anticipated economic costs to people who are required to comply with the proposed amendment. There is no anticipated impact on local employment.

Comments on the proposed section may be submitted to Sheryl Shudde, Program Specialist, Service Delivery Integration, Texas Department of Health M-525, 1100 West 49th Street, Austin, Texas 78756-6405, (512) 458-7111, extension 3144. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §12.032, which authorizes the Texas Board of Health (board) by rule to charge fees for public health services provided by the department; and Health and Safety code, §12.001, which authorizes the board to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects Health and Safety Code, §12.032.

§1.91. Fees for Personal [~~Clinical~~] Health Services.

(a) Poverty Guidelines [~~Introduction~~]. The department provides personal health services directly or through contractors [~~at public health clinics~~] throughout Texas. The commissioner or his designee shall distribute poverty guidelines published annually by the United States Department of Health and Human Services, in coordination with the Texas Medicaid program. Public health regions and the department's contractors shall use these poverty guidelines for determining clients' eligibility for services, unless prohibited from doing so by federal funding requirements. The department's operating procedures contain procedures for implementing the poverty guidelines [~~This section establishes a schedule of fees covering such services~~].

(b) Schedule of fees.

(1) Public health regional clinics shall charge fees for personal health services according to the following schedule. [~~The department shall base the calculation of fees upon the federal poverty guidelines published annually by the U.S. Department of Health and Human Services. The commissioner of health shall adjust the income guidelines annually to determine the schedule of fees for clinical health services. The Income Guidelines and Schedule of Charges shall be published in the Texas Register not later than 30 days after adoption by the commissioner of health and shall be available for public inspection in the offices of the Bureau of Community Oriented Public Health.~~]
Figure: 25 TAC §1.91(b)(1)

[~~(2) The following schedule of fees lists the fees covering clinical health services provided at public health clinics. Local health department contractors may use the following schedule or their own schedule. Public health regions shall use the following schedule.~~]
[~~Figure: 25 TAC, §1.91(b)(2)~~]

(2) [~~(3)~~] No recipient or client eligible for Medicaid shall be charged a fee in addition to the amount reimbursable by Medicaid.

[~~(4) The clinic shall determine if a person is able to pay in accordance with the appropriate schedule; however, the clinic shall not deny services because of a person's inability to pay.~~]

[~~(5) Patients or clients whose incomes are above the 200% + poverty level shall be referred to the private sector for care unless extenuating circumstances exist. Such circumstances include provision of immunization services, prevention and control of communicable diseases, unusually high medical expenses or the unavailability of specific care needed. Such exceptions may receive care at the public health clinic in accordance with the schedule of fees.~~]

[~~(6) A clinic may not charge a fee which exceeds the cost to the clinic of providing service or if prohibited by federal funding requirements.~~]

[~~(7) The clinic shall make a reasonable effort to collect the fees, but the clinic may waive collection if the administrative cost of collection will exceed the fee to be collected.~~]

[~~(8) The clinics covered by this section are those operated by public health regions and local health departments.~~]

[(9) Fees collected by local health department clinics shall be retained by those departments and be accounted for and expended under the rules relating to program income.]

(3) [(10)] Fees collected by public health regional [region] clinics shall be deposited in the state treasury to a special fee fund to be entitled Texas Department of Health services fees fund.

(c) (No change.)

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205840
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER R. STANDARDS FOR CONDUCT GOVERNING THE RELATIONSHIP BETWEEN THE TEXAS DEPARTMENT OF HEALTH AND PRIVATE DONORS AND PRIVATE ORGANIZATIONS

25 TAC §§1.221 - 1.228

The Texas Department of Health (department) proposes amendments to §§1.221-1.228 concerning standards for conduct governing the relationship between the department and private donors and private organizations. Government Code, §2255.001, which addresses the relationship between state agencies and private organizations that are set up to support them, requires these rules. The rules address the issues of donations by private donors, the creation of a private organization that supports the department, the relationship between the department and the private organization, standards of conduct for department employees and private organizations, and miscellaneous topics.

Specifically, the amendments establish consistency and reduce redundancy by using defined terms "department" and "commissioner", and include other minor changes in §§1.221, 1.222, 1.224, 1.227, and 1.228. The statement on the purpose of gifts in §1.223 has been amended to reflect the department's statutory authority to accept gifts in Health and Safety Code §12.011, and also to include the statutory authority of Government Code, Chapter 575, a 1997 enactment on the acceptance of gifts by state agencies. Section 1.225 has been amended to clarify the commissioner's membership on the board of private organizations that support the department, and to clarify the allowable service of family members of employees. Language was added to §1.226(a)(6) for clarification, and §1.226(b)(6) has been added to allow more flexibility to the organization that is supporting the department.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§1.221-1.228 and has determined that reasons for adopting the sections continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review §§1.221-1.228 in the *Texas Register* on May 24, 2002 (27 TexReg 4594). No comments were received due to publication of this notice.

Susan K. Steeg, General Counsel, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local governments.

Ms. Steeg 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 the sections will be to clarify the relationship between the department and supportive outside organizations, and foster the creation and use of such groups to support public health objectives. There will be no cost effects on micro-businesses or small businesses. This was determined by interpretation of the rules that micro-businesses or small businesses will not be required to alter their business practices in order to comply with the rules as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Monty Waters, Assistant General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3783, (512) 458-7236, monty.waters@tdh.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under Government Code, §2255.001 which requires the department to adopt rules governing the relationship with private donors or organizations; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 12, and implement Government Code, §§2255.001, and 2001.039.

§1.221. Purpose.

The purpose of these sections is to establish the rules [criteria, procedures, and standards of conduct] governing the relationship between the [Texas Department of Health (]department[)] and its officers and employees with private donors and with private organizations which exist to further the duties and purposes of the department.

§1.222. Definitions.

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

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

(6) Private organization--A private organization which exists to further the purposes and duties of the department [Texas Department of Health].

§1.223. Donations by Private Donors to the Texas Department of Health.

(a) A private donor may make donations to the [Texas Department of Health (] department[)] to be spent for specified or unspecified public health purposes, including the enforcement of public health laws. If the donor specifies the public health purpose, the department must expend the donation only for that purpose.

(b) All donations shall be expended in accordance with the provisions of the state Appropriations Act and shall be deposited in the state treasury unless exempted by specific statutory authority. All donations of value of $500 or more shall be accepted in accordance with Government Code, Chapter 575.

(c) All donations will be coordinated through the commissioner [~~of the Texas Department of Health (commissioner)~~].

(d) The department may not transfer a private donation to a foundation or private/public development fund without specific written permission from the donor and the written approval of the commissioner or his designee.

§1.224. Donations by a Private Donor to a Private Organization Which Exists To Further the Purposes and Duties of the Texas Department of Health.

(a) A private donor may make donations to a private organization which exists to further the purposes and duties of the [~~Texas Department of Health (~~]department [~~)~~].

(b) The private organization shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the private organization and the department, as described in §1.226(c) of this title (relating to the Relationship between a Private Organization and the Texas Department of Health).

§1.225. Organizing a Private Organization Which Exists To Further the Duties and Purposes of the Texas Department of Health.

(a) The commissioner [~~of the Texas Department of Health (commissioner)~~] and the membership of a private organization covered by these sections may cooperatively appoint a board of directors for the organization. The commissioner may [~~shall~~] be a non-voting member. [~~Texas~~] Department [~~of Health (department)~~] employees or their family members may hold office and vote provided there is no conflict of interest in accordance with all federal and state laws and department policies. [~~This provision applies to the employee's spouse and children.~~]

(b) (No change.)

§1.226. Relationship between a Private Organization and the Texas Department of Health.

(a) The [~~Texas Department of Health (~~] department[~~)~~] may provide to a private organization covered by these sections:

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

(6) other miscellaneous services as needed to further the duties and purposes of the organization in support of the department.

(b) The private organization may provide:

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

(4) recognition of donors; [~~and~~]

(5) bond and liability insurance for organization officers; and

(6) other miscellaneous services as needed to further the duties and purposes of the department

(c) (No change.)

§1.227. Standards of Conduct between Texas Department of Health Employees and Private Donors.

(a) A [~~Texas Department of Health (~~]department[~~)~~]officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his/her official conduct.

(b) - (g) (No change.)

§1.228. Miscellaneous.

The relationship between a private donor and a private organization and the [~~Texas Department of Health~~] department, including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205842
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER X. POSTING OF FINAL ENFORCEMENT ACTIONS

25 TAC §§1.551 - 1.553

The Texas Department of Health (department) proposes new §§1.551, 1.552, and 1.553 concerning the posting of final enforcement actions.

Specifically, the new sections cover the scope of the subchapter; definitions; purpose of posting; posting procedures; website information; effect of other laws; corrections; annual analysis; and trends. New §1.551 will set forth the scope of the subchapter, and define the terms necessary to comply with the Health and Safety Code, Chapter 12. New §1.552 sets forth the purpose of posting final enforcement actions and the requirements of that posting, information to be made available on program websites, and the effect of other laws or errors in the posting. New §1.553 sets forth the requirements of analysis of the enforcement actions, and the trends of enforcement from year to year.

Susan E. Tennyson, J.D., Chief, Bureau of Food and Drug Safety, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of administering the rules as proposed because many regulatory programs already post certain enforcement actions on their websites.

Ms. Tennyson has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be to facilitate public access to public information regarding enforcement actions taken against licensees and persons subject to regulation by the department. There are no anticipated costs to micro-businesses, small businesses or persons to comply with the rules because the rules require department staff to post the enforcement action on the department website. There is no impact on local employment.

Comments on the proposed rules may be submitted to Susan E. Tennyson, Bureau of Food and Drug Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0222, e-mail address: susan.tennyson@tdh.state.tx.us.

Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §12.0145 and §12.0146, which requires the department to publish information about enforcement actions and to analyze trends in enforcement; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect the Health and Safety Code, Chapter 12.

§1.551. Posting Final Enforcement Action Information.

(a) Scope of subchapter.

(1) Each final enforcement action taken by the Texas Board of Health, the Commissioner of Health, or his designee, against a person or facility regulated by the Texas Department of Health (department) shall be published on the department Internet website in accordance with this subchapter.

(2) Final enforcement actions include imposition of a reprimand, period of probation, monetary penalty, condition on a person's continued practice or a facility's continued operation, refusal to license, refusal to renew, suspension, probation, or revocation of a license.

(3) Except to the extent that the information is specifically made confidential by state or federal law, regulatory programs will publish the name, including any trade name, of the person or facility against which an enforcement action was taken, the nature of the violation that the person or facility was found to have committed, or allegedly committed, and the sanction imposed.

(4) The information shall be published so that a complainant cannot be identified.

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

(1) Complaint -- A formal or informal allegation of a violation of a statute or rule against a regulated person filed with the department.

(2) Condition on practice or operation -- Restrictions or limits placed on a person's license or on the person's ability to practice or operate in a regulated activity.

(3) Final enforcement action -- Revocation, suspension, refusal to license or to renew a license, imposition of a reprimand, a period of probation, a monetary penalty, and/or a condition on a person's continued practice or a facility's continued operation, and a signed final order has been issued by the agency and the parties have been notified of the order:

(A) the order has become final in accordance with the Government Code, Administrative Procedure Act, Chapter 2001, or the department's Fair Hearing Rules in Chapter 1., Texas Board of Health, Subchapter C of this title (relating to Fair Hearing Procedures); or

(B) the order is an emergency order and is effective on the date it is signed.

(4) License -- A permit, certificate, registration, certification, accreditation, credential, approval, or other permission to engage in a regulated activity.

(5) Name -- The name of the person or entity listed on the license or the name of the person engaging in the regulated activity, as well as other identifying information, such as the names of the partners in a partnership, to clarify the person(s) subject to enforcement.

(6) Penalty:

(A) administrative penalty imposed by agency order;

(B) civil penalty imposed by a court;

(C) costs of investigation and/or enforcement imposed by the agency or a court order; or

(D) any allowance towards administrative penalties for costs to comply with the statute and the rules.

(7) Period of deferment -- Same meaning as the definition of the word "Probation" in paragraph (8) of this subsection.

(8) Probation -- The temporary suspension of an enforcement action during which the person must comply with certain requirements. Successful completion of the requirements usually means certain terms and/or conditions of the probation will be waived, while failure to complete the probation requirements usually means the final enforcement action will be imposed.

(9) Program -- The area of the department with responsibility for oversight of the regulated activity.

(10) Refusal to license or refusal to renew -- The department has refused to issue or renew a license to an applicant for failure to meet regulatory requirements for the license or for past enforcement compliance history. These definitions do not include a refusal to license or renew for failure of the applicant to complete the application or failure to pay the required fees.

(11) Regulated activity -- Those activities that the legislature has decided should be regulated by statute and for which a person must have a license in which to engage.

(12) Reprimand -- A reproval or censure of a person through means of an order or a letter to the person for failure to meet statutory or regulatory requirements or standards of practice.

(13) Revocation -- Annulling or voiding a license to engage in a regulated activity for failure to comply with statutory or regulatory requirements.

(14) Sanction -- A punitive action applied to a person licensed or engaging in a regulated activity.

(15) Suspension -- The temporary removal of rights or privileges associated with having a license or permission to engage in a regulated activity.

(16) Violation -- A failure to follow prescribed statutes or rules to engage in a regulated activity.

§1.552. Posting Final Enforcement Actions.

(a) Purpose. In order to facilitate public access to public information, each final enforcement action shall be published on the department Internet website in accordance with this subchapter.

(b) Posting.

(1) All final enforcement actions shall be posted within 10 working days of the date the action is final on the web page of the appropriate program, in the format provided by department policy.

(2) Assurances of voluntary compliance or orders signed by a court arising from referrals by the department regulatory programs shall be posted within 10 working days of the date of the order on the web page of the appropriate program, in the format provided by department policy.

(3) Final enforcement actions and court orders shall continue to be posted for a minimum of one year or until the end of any probationary term or period of deferment, whichever is longer.

(4) Final enforcement actions and court orders must be updated at least quarterly with the most current information.

(c) Website Information.

(1) Posting of final enforcement actions and court orders must be on an easily located web page within each program's website. A link to the enforcement web pages must be made from the main department website.

(2) Posting on the program's website shall be in addition to any other law that may require public dissemination of final enforcement actions.

(3) Each program's enforcement web page shall, at a minimum, contain the toll-free number of the program and the name and telephone number of the person to contact in the program for more information.

(4) Information shall be published in clear language that can be readily understood by a person with a high school education.

(d) Effect of other laws.

(1) Public Information Act. This subchapter is not intended to restrict or enlarge the scope of public information as defined by the Government Code, Public Information Act, Chapter 552.

(2) Records retention. This subchapter is not intended to affect the length of time records must be preserved under the Government Code, §441.094 (relating to Records Schedule and Implementation Plan).

(3) Effect of federal law. Unless federal law is preemptive and specifically conflicts with this subchapter, this subchapter prevails.

(e) Corrections.

(1) The affected program may correct information that is incorrect at the time it is posted.

(2) The program shall update the information posted if the regulated entity has changed names, but is not a new entity, after the final enforcement action, but prior to the end of the posting period.

(3) A judicial order on an appeal of a final enforcement action which sets aside or modifies a final enforcement action shall cause the posting to be removed from the website or modified to conform to the judicial order.

§1.553. Annual Analysis and Trends.

(a) Analysis.

(1) Each program shall publish an annual analysis of its final enforcement actions based on the information from the previous state fiscal year. The analysis shall be posted on the program's website by November 1 of each year.

(2) The analysis shall, at a minimum, encompass each profession, industry, or type of facility regulated by that program.

(b) Trends.

(1) An analysis of the year-to-year trends in the number and type of enforcement actions taken shall be included with the posted annual analysis.

(2) The year-to-year trends shall be posted for a five-year interval, as the information becomes available to the program.

(3) The year-to-year trends shall be posted by December 1 of each year.

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 September 6, 2002.

TRD-200205841
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §§38.2 - 38.4, 38.10, 38.12, 38.13, 38.15, 38.16

The Texas Department of Health (department) proposes amendments to §§38.2 - 38.4, 38.10, 38.12, 38.13, 38.15 and proposes new §38.16, concerning the Children with Special Health Care Needs Services Program (CSHCN). Specifically, §38.2 concerns definitions; §38.3 concerns eligibility for client services; §38.4 concerns covered services; §38.10 concerns payment of services; §38.12 concerns denial/modification/suspension/termination of eligibility and/or services; and §38.13 concerns right of appeal. The department also proposes to amend §38.15 concerning the CSHCN Advisory Committee (committee). The amendments to §§38.2-38.4, 38.10, 38.12, and 38.13 and the new §38.16 are proposed as a result of a budget shortfall. The amendment to §38.15 is proposed to conform with Government Code, Chapter 2110 concerning advisory committees. The new §38.16 defines the process used by CSHCN for annual budget alignment to ensure that it remains within its appropriated funds.

An amendment to §38.2 clarifies certain definitions and adds definitions of "new client," "ongoing client," "waiting list client," "health care benefits," and "urgent need for health care benefits." An amendment to §38.3 clarifies certain language, moves information related to the waiting list to new §38.16, and deletes information related to a separate waiting list for family support services. An amendment to §38.4 clarifies diagnosis and evaluation services and certain other language, adds coverage of renal transplants if cost effective for the program, deletes language reflecting a separate waiting list for family support services and the language regarding "Social Security Income (SSI) purchase of service" which is no longer applicable, states that the program may limit reimbursements and/or prior authorizations to address a budget shortfall, and deletes a subsection concerning budgetary limitations more fully addressed in new §38.16. An amendment to §38.10 clarifies some claims submission requirements, states that the program may make reductions in reimbursements to address a budget shortfall and/or help fund services for clients on the waiting list, adds coverage and payment strategy for renal transplants, and deletes information related to budget alignment that is addressed in new §38.16. An amendment to §38.12 provides for client notification if the client must be placed on a waiting list for program services. An amendment to §38.13 clarifies the client appeal process.

The department also proposes amendments to §38.15 concerning the Children with Special Health Care Needs Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) on matters relating to the development of comprehensive systems of health care for children with special health care needs and their families. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

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

In 2001, the board established a rule relating to the Children with Special Health Care Needs Advisory Committee. The rule states that the committee will automatically be abolished on January 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until January 1, 2007.

The department amends provisions in §38.15 relating to the operation of the committee. Specifically, language is revised to continue the committee until January 1, 2007; to decrease the membership of the committee from 18 to 15 and combine membership categories; to change the process for filling vacancies in the offices of presiding officer and assistant presiding officer; and to clarify the components that the committee must include in an annual report to the board.

New §38.16 defines the detailed process by which the CSHCN program shall align its budget annually. In 1999, the 76th Legislature amended Health and Safety Code, Chapter 35, significantly changing CSHCN's eligibility criteria and covered services, and authorizing CSHCN to establish a waiting list for services to enable it to remain within its appropriated budget. In September 2001, CSHCN projected significant budget constraints and instituted a waiting list for rehabilitation (medical) services effective October 5, 2001. New §38.16 addresses the management of the waiting list and also establishes criteria and the protocol to be utilized by CSHCN to determine "urgent need for health care benefits."

Lesa Walker, MD, MPH, Acting Director, CSHCN Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of administering the sections as proposed. Because the program may establish a waiting list and take other measures to assure that expenditures do not exceed the program's legislative appropriation, implementation of the proposed rules will result in no overall or total change in the program's fiscal impact upon state government.

Dr. Walker has also determined that for each year of the first five years the amended §§38.2-38.4, 38.10, 38.12, 38.13, and new §38.16 are in effect, the public benefit anticipated is that CSHCN will be able to apportion its appropriated funds and serve clients throughout each fiscal year. Dr. Walker has determined that for the first five years the proposed amended §§38.2-38.4, 38.10, 38.12, 38.13, and new §38.16 are in effect, there may be adverse economic effects on some micro-businesses and small businesses. Since the proposed rules, if implemented, authorize CSHCN to limit the number of clients who may receive services under CSHCN and to institute specific reductions/limitations in reimbursements to providers in order to address a budget shortfall, individual small businesses and micro-businesses that are CSHCN providers may be adversely affected. Individuals who are CSHCN providers may be affected in the same way, and CSHCN clients may be placed on a waiting list for services. Limiting the number of CSHCN clients may cause cost shifting and reduced reimbursement among these providers. Other programs that also serve CSHCN clients may be impacted to the extent that CSHCN's ability to provide services to those clients is limited.

Implementation of the proposed and new sections may have an unquantifiable effect on employment in some local economies if the impact on particular CSHCN providers is significant. Dr. Walker has determined that for each year of the first five years the amended §38.15 is in effect, the public benefit anticipated as a result of the amendment is continued advisory assistance from the committee to the board and the program. Dr. Walker further has determined that for the first five years the amendments to §38.15 concerning the CSHCN Advisory Committee are in effect, there will be no fiscal implications for state governments, local governments, micro-businesses, and small business as a result of the proposed changes. This was determined by interpretation of the rules that micro-businesses or small businesses will not be required to alter their business practices as a result of the proposed amendment of this rule. There are no economic costs to persons who may be affected by the proposed amendment of this rule. There is no anticipated impact on local employment.

Comments will be accepted for 60 days following the publication of the proposed rules and may be submitted to Lesa Walker, MD, MPH, Acting Division Director, CSHCN Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days following publication of the proposed amendments and new section in the *Texas Register*.

The amendments and new section are proposed under the Health and Safety Code, §§35.003-35.006, 35.009, and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty proposed by law on the board, the department, or the commissioner of health.

The amendments and new section affect the Health and Safety Code, Chapter 35, and implement Government Code, Chapter 2110.

§38.2. Definitions.

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

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

(6) Bona fide resident--A person who:

(A) - (D) (No change.)

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, [~~or~~] guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a bona fide resident;

(ii) (No change.)

(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, [~~legal~~] guardian of the adult's person, or caretaker (with whom the adult consistently resides and plans to continue to reside) is a bona fide resident or who is his/her own guardian.

(7) Case management services--Case management services include, but are not limited to:

(A) planning, accessing, and coordinating needed health care and related [~~medical~~] services for children with special health care needs and their families. Case management services are performed in partnership with the child, the child's family, providers, and others involved in the care of the child and are performed as[~~, marshaling available assistance, serving as a liaison between the child and the child's family and care givers, sources of insurance coverage, and other services~~] needed to help improve the well-being of the child and the child's family; and

(B) (No change.)

(8) - (12) (No change.)

(13) Client--A person who meets all CSHCN program eligibility requirements for program services and who is eligible and [~~is~~] enrolled to receive program services [~~for services to be provided~~].

(A) New client:

(i) a person who is applying to the program for the first time and who is determined to be eligible for program services; or

(ii) a person who is re-applying to the program (after a lapse in eligibility) and who is determined to be eligible for program services.

(B) Ongoing client--A client who currently is not on the program's waiting list.

(C) Waiting list client--A client who currently is on the program's waiting list.

(14) - (21) (No change.)

(22) Diagnosis and evaluation services--The process of performing specialized examinations, tests, and/or procedures to determine whether a CSHCN program applicant has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN program and/or to help determine whether a waiting list client has an "urgent need for health care benefits", according to the criteria and protocol described in §38.16(e) of this title (relating to Procedures to Address CSHCN Program Budget Alignment).

(23) Eligibility date for the CSHCN program health care benefits--The effective date of eligibility for the CSHCN program health care benefits is 15 days prior to the date of receipt of the application, except in the following circumstances.

(A) - (E) (No change.)

(24) - (29) (No change.)

(30) Health care benefits--Program benefits consisting of diagnosis and evaluation services, rehabilitation services, medical home care management services, family support services, transportation related services, and insurance premium payment services.

(31) [~~(30)~~] Health insurance/health benefits plan--A policy or plan, either individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical and/or dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, the Civilian Health and Medical Program of the Uniformed Services/Veterans Administration (CHAMPUS, CHAMPVA) or their successor plans, Medicaid, the Children's Health Insurance Program (CHIP), and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical and/or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a medical school shall not constitute health insurance for purposes of this chapter.

(32) [~~(31)~~] Household--The living unit in which the applicant resides and which also may include one or more of the following:

(A) mother;

(B) father;

(C) stepparent;

(D) spouse;

(E) foster parent(s), managing conservator, or guardian;

(F) grandparent(s);

(G) sibling(s);

(H) stepbrother(s); or

(I) stepsister(s).

(33) [~~(32)~~] Medical home--A source of ongoing routine health care in the community in which providers and families work as partners to meet the needs of children and families. The medical home assists in early identification of special health care needs; provides ongoing primary care; and coordinates with a broad range of other specialty, ancillary, and related services.

(34) [~~(33)~~] Natural home--The home in which the eligible person lives that is either the residence of his/her parent(s), foster parent(s) or guardian(s), or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support systems such as family, friends, co-workers, and services available to the general population as they are available.

(35) [~~(34)~~] Newborn screening--The process required by law through which newborn children are screened for congenital anomalies, including but not limited to hearing impairment, congenital adrenal hyperplasia, congenital hypothyroidism, galactosemia, phenylketonuria, and hemoglobinopathies, such as sickle cell disease.

(36) [~~(35)~~] Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the CSHCN program including benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sections 1395 *et seq.*, 1396 *et seq.*, and 1397aa *et seq.*), as amended;

(C) the Department of Veterans Affairs;

(D) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS);

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(37) [~~(36)~~] Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment; an enduring, positive adult relationship(s); and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children; to reunite with their children when they have been placed outside the home; and to place their children in family environments.

(38) [~~(37)~~] Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(39) [~~(38)~~] Physician--A person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(40) [~~(39)~~] Prematurity/born prematurely--A child born at less than 36 weeks gestational age and hospitalized since birth.

(41) [~~(40)~~] Program--The services program for Children with Special Health Care Needs (CSHCN).

(42) [~~(41)~~] Provider--A person and/or facility as defined in §38.6 of this title (relating to Providers) [~~chapter~~] that delivers services purchased by the CSHCN program for the purpose of implementing the Act.

(43) [~~(42)~~] Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic/rehabilitative services:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other services [~~types of care~~] specified [~~by the board~~] in this chapter.

(44) [~~(43)~~] Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary care giver is needed.

(45) [~~(44)~~] Routine child care--Child care for a child who needs supervision while the parent/guardian is at work, in school, or in job training.

(46) [~~(45)~~] Services--The care, activities, and supplies provided under the Act, including but not limited to both acute and chronic/rehabilitative medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, family support services, case management services [~~rehabilitation~~], and other care specified by program rules.

(47) [~~(46)~~] Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN clients to obtain program services [~~benefits~~].

(48) [~~(47)~~] Specialty center--A facility and staff that meets the CSHCN program minimum standards established in this chapter and are designated for CSHCN program use as part of the comprehensive services for a specific medical condition.

(49) [~~(48)~~] Spenddown--Financial eligibility achieved when household income exceeds 200% of the federal poverty level, if the applicant's family can document its responsibility for household medical bills that are equal to or greater than the amount in excess of the 200% level.

(50) [~~(49)~~] State--The State of Texas.

(51) [~~(50)~~] Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(52) [~~(51)~~] Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(53) [~~(52)~~] Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner participating in the CSHCN program.

(54) [~~(53)~~] United States Public Health Service (USPHS) price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(55) Urgent need for health care benefits--A client need that fits the criteria and protocol described in §38.16(e) of this title.

(56) [~~54~~] Usual and customary--The least of the following:

(A) the customary charge, based on the provider's own historical charges;

(B) the prevailing charge, based on the customary charges of all providers in the same geographical locality with the same medical specialty; or

(C) the provider's actual charge.

§38.3. Eligibility for CSHCN Program [~~Client~~] Services.

(a) Eligibility for health care benefits. In order to be determined eligible for CSHCN program health care benefits [~~services~~], applicants must meet the medical, financial, and other criteria in this section.

(1) Medical criteria. A physician or dentist must certify annually that the person meets the definition of "child with special health care needs" as defined by §38.2(8) of this title (relating to Definitions). The CSHCN program must receive a medical diagnosis code from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), or its successor, on each condition for statistical and referral purposes. If a physician or dentist requests coverage of diagnosis and evaluation services to determine if the child/applicant meets the definition of a "child with special health care needs", and the applicant meets all other eligibility criteria, then the applicant may be given up to 60 days of eligibility for program coverage of diagnosis and evaluation services only.

(2) Financial criteria. Financial criteria are determined annually and are based upon the same determinations of income, family size, and disregards as the CHIP. The CHIP net income is the family's gross income minus disregards. For applicants who are not eligible for CHIP, premiums paid for health insurance may be included as an additional disregard. All families must verify their income and disregards.

(A) The income level for eligibility is 200% of the federal poverty level. If the family income exceeds this level, and the applicant's family can document its responsibility for household medical bills incurred within 12 months of the application date or within 12 months after the financial eligibility denial date that are equal to or greater than the amount in excess of the 200% level, the applicant may be determined financially eligible for a period of 12 months beginning on the eligibility date.

(B) Applications to Medicaid and the Supplemental Security Income (SSI) programs.

(i) If actual or projected CSHCN program expenditures for a client exceed $2,000 per year, the client whose age, medical condition, or citizenship status do not exceed Medicaid eligibility criteria shall be required to apply for Medicaid, specifically including the Medically Needy program and, if eligible, to participate in those programs in order to remain eligible for further CSHCN program benefits. Within 60 days of the date of the notification letter, the client must submit to the CSHCN program documentation of an eligibility determination from Medicaid. During this 60-day period, CSHCN program coverage will continue. If the client does not provide documentation of an eligibility determination from Medicaid within the 60-day time limit, CSHCN program coverage shall be terminated and may not be reinstated unless an eligibility determination is received. The program may grant the client a 30-day extension to obtain the determination.

(ii) The CSHCN program also may require a client for whom actual or projected expenditures exceed $2,000 per year to apply for the SSI program, and, if eligible, to participate in that program in order to remain eligible for further CSHCN program benefits. Within 60 days of the date of the notification letter, the client must submit to the CSHCN program verification of a timely and complete application to SSI. During this 60-day period, CSHCN program coverage will continue. If the client does not provide this verification within the 60-day time limit, CSHCN program coverage may be terminated. With verification of an application to SSI, the program may continue coverage, pending receipt of an SSI eligibility determination.

(3) Health insurance.

(A) All health insurance coverage insuring the applicant and/or family must be listed on the application. If insurance coverage was effective prior to CSHCN program eligibility, such coverage must be kept in force. Noncompliance with this requirement may result in the termination of CSHCN program benefits. If insurance cannot be maintained, the applicant or parent/guardian/managing conservator must, upon request, provide to the CSHCN program proof of:

(i) cancellation from the insurer or plan sponsor;

(ii) discontinuation of the insurance plan by the insurer or plan sponsor;

(iii) exhaustion of the right to continue group insurance coverage as provided under federal and/or state law; or

(iv) financial inability to continue paying the cost of any health insurance except CHIP.

(B) If the applicant/client does not have health insurance at the time of application or eligibility renewal, but coverage may be available, including coverage under CHIP, the applicant/client that is not exempt by reason of age or citizenship status must apply for coverage and receive an eligibility determination within 60 days of the date of notification. With verification of an application to an available health insurance plan, the program may extend this deadline and/or continue CSHCN program coverage, pending receipt of an insurance eligibility determination. If the applicant/client is eligible for CHIP, the applicant/client must be enrolled in CHIP. Such insurance must be kept in force as though it were effective prior to CSHCN program eligibility.

(C) The CSHCN program will assist in determining possible eligibility for insurance and may provide CSHCN program benefits during insurance application, enrollment, and/or limited or excluded coverage periods. A family support services plan for an applicant may not be implemented until the determination of program eligibility, including eligibility for available insurance plans is complete.

(D) Before canceling, terminating, or discontinuing existing health insurance, or electing not to enroll a client in available health insurance, including canceling, terminating, discontinuing, or not enrolling in CHIP, the parent/guardian/managing conservator must notify the CSHCN program 30 days prior to cancellation, termination, discontinuance, or end of the enrollment period. When the CSHCN program provides assistance in keeping or acquiring health insurance, the parent/guardian/managing conservator must maintain or enroll in the health insurance.

(4) Age. The applicant, other than one with cystic fibrosis, must be under the age of 21.

(5) Residency. The applicant must be a bona fide resident of the State of Texas.

(6) Application.

(A) Applications are available to anyone seeking assistance from the CSHCN program. To be considered by the CSHCN program, the application must be made on forms currently in use.

(B) A person is considered to be an applicant from the time that the CSHCN program receives an application. The CSHCN program will respond in writing regarding eligibility status within 30 working days after the completed application is received. Applications will be considered:

(i) denied, if eligibility requirements are not met;

(ii) incomplete, if required information that includes a CHIP, Medicaid, or SSI determination or any other data/document needed to process the application is not provided, or if an outdated form is submitted; or

(iii) approved, if all criteria are met.

(C) The denial of any application submitted to the CSHCN program shall be in writing and shall include the reason(s) for such denial. The applicant has the right of administrative review

and a fair hearing as set out in §38.13 of this title (relating to Right of Appeal).

(D) Any person has the right to reapply for CSHCN program coverage at any time or whenever the person's situation or condition changes.

(7) Verification of information.

(A) The CSHCN program shall make the final determination on a person's eligibility using the information provided with the application. The CSHCN program may request verification of any information provided by the applicant to establish eligibility.

(B) The CSHCN program shall verify selected information on the application. Documentation of date of birth, residency, income, and income disregards shall be required. The CSHCN program shall notify the applicant/family in writing when specific documentation is required. It is the applicant's/family's responsibility to provide the required information.

(C) Those applicants/clients financially eligible for CHIP, Medicaid, or other programs with similar income guidelines who also meet the age and residency requirements of the CSHCN program will be considered financially eligible. The applicant/client/family must notify the CSHCN program, if the applicant/client is no longer eligible for such programs.

(8) Determination of continuing eligibility for health care benefits. Medical and financial criteria for eligibility for health care benefits must be re-established at least annually. Ongoing clients for health care benefits will be notified of program deadlines for annual re-establishment of eligibility. If an ongoing client for health care benefits does not meet program deadlines for submitting information required for the annual determination of continuing eligibility, the client's eligibility for health care benefits will end. If the then former client re-applies to the program after such lapse in eligibility and is determined eligible for health care benefits, the former client will be considered a new client. If the program has a waiting list for health care benefits, the new client will be placed on the waiting list in order according to the date/time the client is determined eligible for the program health care benefits.

[(9) CSHCN program waiting lists.]

[(A) If budgetary limitations exist, waiting lists for access to CSHCN program services may be established. Clients shall be removed from waiting lists based on the dates in subparagraph (C) of this paragraph. However, clients may also be removed from waiting lists on the basis of urgent need or the severity of illness.]

[(B) In order to facilitate contacting clients on the waiting list, the CSHCN program will collect information including, but not limited to the following:]

[(i) the client's name, address, and telephone number;]

[(ii) the name, address, and telephone number of a contact person other than the client;]

[(iii) the date of the client's earliest application for services;]

[(iv) the date on which the client became eligible for services;]

[(v) the client's functional limitations or needs;]

[(vi) the range of services needed by the client; and]

[(vii) a date on which the client is scheduled for re-assessment.]

[(C) Waiting lists are maintained separately for rehabilitation services and family support services, and an eligible client may receive access to either without receiving access to both.]

[(i) A statewide waiting list for rehabilitation services is maintained in the CSHCN program central office, based on the date and time the client's application is processed and determined eligible for program services.]

[(ii) Waiting lists for family support services are maintained in each of the department's public health regions or other designated subdivisions of the state based upon:]

[(I) the date and time the client's application is processed and determined eligible for program services; or]

[(II) in the case of an eligible client, the date the client requests family support services.]

[(D) Waiting lists are maintained continually from one fiscal year to the next. Clients must maintain eligibility to remain on any waiting list. A lapse of eligibility constitutes loss of position on any waiting list.]

[(E) Clients on waiting lists also shall be referred to other possible sources of services, and shall be contacted periodically to re-confirm their need for CSHCN program services.]

(b) Eligibility for case management services. The CSHCN program may provide and/or reimburse for case management services to persons in need of such services who are bona fide residents and who are determined not to have another primary provider and/or funding source for such services. The program's case management services are focused on individuals (and their families) who are clients, applicants, or potential applicants for the program's health care benefits. However, the program may offer and provide case management services to individuals (and their families) who are neither eligible nor seeking eligibility for the program's health care benefits.

§38.4. Covered Services.

(a) (No change.)

(b) Types of service.

(1) (No change.)

(2) Diagnosis and evaluation services. May be covered for the purpose of determining whether a financially eligible child meets the CSHCN program definition of a child with special health care needs. Diagnosis and evaluation services must be prior authorized. The program medical director may prior authorize limited coverage of diagnosis and evaluation services for waiting list clients if needed to help determine "urgent need for health care benefits" as described in §38.16(e) of this title (relating to Procedures to Address CSHCN Program Budget Alignment). Only CSHCN program participating providers may be reimbursed for diagnosis and evaluation services.

(3) Rehabilitation services. Rehabilitation [As defined by the Act, rehabilitation] services means a process of physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which [, and] includes the following acute and chronic/rehabilitative services [, but is not limited to]: facility care, medical and dental care, [and] occupational, speech, and physical therapies, [therapy;] the provision of medications, braces, orthotic and prosthetic devices, [medications,] durable medical equipment, [and] other medical supplies, [;] and other services [types of care

~~as~~] specified in this chapter. To be eligible for CSHCN program reimbursement, treatment must be for a client with a chronic physical or developmental condition as specified in §38.3(a)(1) of this title (relating to Eligibility for CSHCN Program [~~Client~~] Services), and must have been prescribed by a provider in compliance with all applicable laws and regulations of the State of Texas. Services may be limited, and the availability of certain services described in the following subparagraphs is contingent upon implementation of automation procedures and systems.

(A) - (D) (No change.)

(E) Treatment in CSHCN program participating facilities. Non-emergency hospital care must be provided in facilities which are enrolled as CSHCN program participating providers. The length of stay is limited according to diagnosis, procedures required, and the client's condition.

(i) - (iv) (No change.)

(v) Care for renal disease [~~Renal dialysis facility~~]. Renal dialysis is limited to the treatment of acute renal disease or chronic (end stage) renal disease through a renal dialysis facility and includes, but is not limited to dialysis, laboratory services, drugs and supplies, declotting shunts, on-site physician services, and appropriate access surgery. Renal transplants may be covered in approved renal transplant centers if the projected cost of the transplant and follow-up care is less than that of continuing renal dialysis. Renal transplants must be prior authorized.

(F) - (R) (No change.)

(4) Care management.

(A) (No change.)

(B) Case management. Case management services may be made available to eligible clients through public health regional offices or other resources to assist clients and their families in obtaining adequate and appropriate [~~support~~] services to meet the client's health and related services needs [~~related to the client's medical condition, such as referral, coordination, and follow-up~~]. The program will offer case management as needed/ desired to all clients who are eligible for health care benefits. The program also may offer case management services to clients who are not eligible for the program's health care benefits.

(5) Family support services. Family support services include disability-related support, resources, or other assistance and may be provided to the family of a client with special health care needs.

(A) Eligibility. A client is eligible to receive family support services if:

(i) the client is fully eligible for the CSHCN program health care benefits;

~~*[(ii)* there is no waiting list for family support services;]~~

(ii) [~~(iii)~~] the client is not receiving services from a Medicaid home and community-based waiver program, and the requested service does not duplicate services received from other family support programs, such as the In-Home and Family Support program at the Texas Department of Human Services or the Texas Department of Mental Health and Mental Retardation; and

(iii) [~~(iv)~~] the client's family collaborates with the assigned case manager to identify and pursue other sources of support and to develop a family support services plan.

(B) Processing and evaluation of requests.

(i) - (ii) (No change.)

(iii) All requests for family support services must be prior authorized (approved by the CSHCN program prior to delivery).

(iv) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as needed to address the budget shortfall situation and/or generate cost savings to allow program coverage of clients on the waiting list, as provided in §38.16 of this title.

(v) [~~(iv)~~] Some services or items may require a written statement from a physician, physical therapist, occupational therapist, and/or other healthcare professional to establish the disability-related nature of the request.

(vi) [~~(v)~~] Some services or items may require written bids.

(vii) [~~(vi)~~] Persons requesting assistance are responsible for collaborating with their case managers as necessary so that an accurate determination can be made in a timely manner.

(viii) [~~(vii)~~] Families shall be notified in writing of the outcome of their requests.

(ix) [~~(viii)~~] Families have the right to appeal a decision as described in §38.13 of this title (relating to Right of Appeal).

(C) Service plan and cost allowances.

(i) In order to obtain prior authorization for family support services [~~After a client has been determined eligible and family support assistance becomes available~~], the case manager and the client/family must develop a written family support services plan.

(ii) - (vi) (No change.)

(D) (No change.)

(E) Unallowable services. Family support funds may not be used to provide those services that do not relate to the client's disability and do not directly support the client's living in his/her natural home and participating in family life and integrated/inclusive community activities. Examples of unallowable services include, but are not limited to:

(i) - (x) (No change.)

(xi) medical benefit items or services paid for or reimbursed by private insurance, Medicaid, Medicare, CHIP, the CSHCN program [~~Health Benefits Plan,~~] or other health insurance programs for which the client is eligible;

(xii) services, equipment, or supplies that have been denied by Medicaid, CHIP, or the CSHCN program [~~Health Benefits Plan~~] because a claim was received after the filing deadline, insufficient information was submitted, or because an item was considered inappropriate or experimental;

(xiii) - (xx) (No change.)

(F) Reduction/termination of services. Reasons for terminating or reducing family support services may include, but are not limited to:

(i) - (ii) (No change.)

(iii) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as needed to address the budget shortfall situation and/or generate cost savings to allow program coverage of clients on the waiting list, as provided in §38.16 of this title.

(iv) [~~(iii)~~] the client's family indicates that the need for family support services no longer exists;

(v) [~~(iv)~~] the client moves out of Texas;

(vi) [~~(v)~~] the client is placed in a nursing facility or other institutional setting for an indefinite period of time;

(vii) [~~(vi)~~] the client dies;

(viii) [~~(vii)~~] the client's designated case manager is unable to locate the client/family; or

(ix) [~~(viii)~~] the family knowingly does not comply with the written family support services [~~services~~] plan, in which case the family may also be liable for restitution.

(6) Other types of services. The following services also are available through the CSHCN program.

(A) - (E) (No change.)

~~[(F) Social Security Income (SSI) purchase-of-service. The CSHCN program may administer a purchase-of-service program for individuals who are determined to be SSI recipients.]~~

(c) (No change.)

~~[(d) Limitations.]~~

~~[(1) If budgetary limitations exist, the CSHCN program may adopt a system to prioritize access to services based upon urgent need or severity of illness, which may require placing a client then receiving services on a waiting list. At the next annual eligibility determination, a client currently receiving services will be given a minimum of 30 days notice of the CSHCN program's intent to place the client on a waiting list.]~~

~~[(2) With board approval, and in accordance with §38.10 of this title (relating to Payment of Services), the CSHCN program may discontinue, limit, or restrict services, reimbursement for services or types of services available to all clients to remain within available funding and to provide effective and efficient administration. Discontinuation, limitation, or restriction may apply to selected provider types or services and not to others. If cutbacks in services are necessary and published notice is not required, clients and providers directly affected will be given a minimum of 30 days notice.]~~

(d) [~~(e)~~] Service authorization. The CSHCN program may require authorization (including prior authorization) of reimbursement for selected services for clients.

(1) Provider's responsibility. A CSHCN provider must request services in specific terms on department-prepared forms so that an authorization may be issued and sufficient monies encumbered to cover the cost of the service. If a service is authorized, payment may be made to the provider as long as the service is not covered by a third party resource, and all billing requirements are met. Program authorization should not be considered an absolute guarantee of payment.

(2) Required prior authorization for selected services. At the CSHCN program's option, selected services may require authorization prior to the delivery of services in order for payment to be made.

(3) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as needed to address the budget shortfall situation and/or generate cost savings to allow program coverage of clients on the waiting list, as provided in §38.16 of this title.

(4) [~~(3)~~] Use of other benefits. The CSHCN program is the payer of last resort. The Children with Special Health Care Needs Services Act provides that any health insurance or other benefits including, but not limited to commercial health insurance, health maintenance organizations, preferred provider organizations, CHAMPUS/CHAMPVA, Medicaid or Medicaid waiver programs, CHIP, liability insurance, or worker's compensation insurance available to the client must be used prior to payment by the CSHCN program.

(e) [~~(f)~~] Pilot projects. The CSHCN program may initiate and participate in pilot projects to determine the fiscal impact of changes in eligibility criteria and the types of services provided. New projects are possible only if funds are available in the current fiscal year. All pilot projects are limited to no more than 10% of the fiscal year appropriation.

§38.10. Payment of Services.

The CSHCN program reimburses participating providers for covered services for CSHCN clients. Payment may be made only after the delivery of the service, with the exception of meals, transportation, and lodging and insurance premium payments. Excluding allowable insurance or health maintenance organization co-payments, the client or client's family must not be billed for the service or be required to make a preadmission or pretreatment payment or deposit. Providers must agree to accept established fees as payment in full. The program may negotiate reimbursement alternatives to reduce costs through requests for proposals, contract purchases, and/or incentive programs. Also, the program may make across the board reimbursement reductions or specific fee reductions or otherwise limit reimbursements to address a budget shortfall and/or to help fund services for clients on the waiting list.

(1) (No change.)

(2) Claims involving health insurance coverage, CHIP or Medicaid. Any health insurance that provides coverage to the client must be utilized before the CSHCN program can pay for services. Providers must file a claim with health insurance, CHIP, or Medicaid prior to submitting any claim to the CSHCN program for payment. Claims with health insurance must be submitted to the CSHCN program within 90 days of the date of disposition by the other third party resource, but no later than 365 days from the date of service. The CSHCN program will consider claims received for the first time after the 365-day deadline if a third party resource recoups a payment made in error; however, the claim must be received by the CSHCN program within 90 days from the third party's disposition.

(A) Health insurance denial or nonresponse. If a claim is denied by health insurance, the provider may bill the CSHCN program, if the letter of denial also is submitted with the claim form. If the denial letter is not available, the provider must include on the claim form the date the claim was filed with the insurance company, the reason for the denial, name and telephone number of the insurance company, the policy number, the name of the policy holder and identification numbers for each policy covering the client, the name of the insurance company employee who provided the information on the denial of benefits, and the date of the contact. If more than 110 days have elapsed from the date a claim was filed with the third party resource and no response has been received, the claim may be submitted to the CSHCN program for consideration of payment. Claims must be submitted with documentation indicating the third party resource has not responded [~~the insurance company has not responded after 110 days, the bill may be submitted to the CSHCN program~~].

(B) - (D) (No change.)

(3) CSHCN program fee schedules. The CSHCN program or its designee shall reimburse claims for covered medical, dental, and

other services according to the following fee schedules [~~and/or methodologies, except as specified in paragraphs (6) - (8) of this section~~]. The program may make across the board reimbursement reductions or specific fee reductions or otherwise limit reimbursements to address a budget shortfall and/or to help fund services for clients on the waiting list.

(A) - (G) (No change.)

(H) expendable medical supplies--the lower of the billed amount or the amount allowable by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) [~~Health Care Financing Administration (HCFA)~~], if available, or by the Texas Medicaid Program;

(I) durable medical equipment:

(i) non-customized--the lower of the billed amount or the amount allowable by the CMS [~~HCFA~~], if available, or the Texas Medicaid Program;

(ii) (No change.)

(iii) orthotics and prosthetics--the lower of the billed amount or the amount allowed by the CMS [~~HCFA~~], if available, or the Texas Medicaid Program;

(J) - (Q) (No change.)

(R) care for renal disease--

(i) renal dialysis services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and/or

(ii) renal transplant services--renal transplants may be covered if the projected cost for the transplant and follow-up care is less than that of continuing renal dialysis. Negotiated coverage and cost are based on prior authorization documentation of cost effectiveness;

(S) freestanding ambulatory surgical centers--the lower of the billed amount or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the CMS [~~HCFA~~] and the Texas Department of Health;

(T) hospital ambulatory surgical centers--the lower of the amount billed or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the CMS [~~HCFA~~] and the Texas Department of Health;

(U) (No change.)

(V) independent laboratory--the lowest of the following:

(i) (No change.)

(ii) the amount allowed by the CMS [~~HCFA~~] national fee schedule; or

(iii) (No change.)

(W) - (Y) (No change.)

(4) - (5) (No change.)

~~[(6) The program shall request board approval for discontinuation, limitation, or restriction of services, reimbursement for services, or types of services available to certain categories of clients if the program must preserve funds in order to better serve the entire client population.]~~

~~[(7) With board approval, the program shall implement limits or restrictions that will effect the greatest potential cost savings with the least adverse impact on the total client population and that will require minimal adjustment to covered services, types of service, or reimbursement for services.]~~

~~[(8) Criteria the program may consider shall include the following:]~~

~~[(A) a review and analysis of program expenditures and projections for expenditures made at the conclusion of each quarter of the biennium;]~~

~~[(B) a comparison of current program expenditures and expenditures for prior years made at the conclusion of each quarter of the biennium;]~~

~~[(C) an assessment of program costs by:]~~

~~*[(i)* client age;]~~

~~*[(ii)* diagnosis groups;]~~

~~*[(iii)* client residency status;]~~

~~*[(iv)* third party payer resources; and/or]~~

~~*[(v)* other client demographic information;]~~

~~[(D) an assessment of costs across provider types;]~~

~~[(E) historic or projected health care delivery system payment practices, rates, or trends;]~~

~~[(F) the capability to make a decision rapidly operational; or]~~

~~[(G) other criteria applicable only in specific circumstances.]~~

§38.12. Denial/Modification/Suspension/Termination of Eligibility for Health Care Benefits and/or Health Care Benefits ~~[Services]~~.

(a) Any person applying for or receiving health care benefits from the CSHCN program shall be notified in writing if the CSHCN program proposes to deny, modify, suspend, or terminate such health care benefits because:

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

(8) utilization review indicates inappropriate use of CSHCN program services and the client/family fails to adhere to a plan established to direct and/or supervise the use of CSHCN program services; [~~or~~]

(9) CSHCN program funds are reduced or curtailed; or

(10) the client is placed on a waiting list for program health care benefits.

(b) (No change.)

§38.13. Right of Appeal.

(a) (No change.)

(b) Appeal procedures for clients.

(1) Administrative review. If the CSHCN program intends to deny, modify, suspend, or terminate a client's eligibility for health care benefits and/or health care benefits (unless health care benefits changes are due to budgetary constraints) [~~for services~~], the CSHCN program shall give the client written notice of the client's right to request an administrative review of the proposed action within 30 days. If the client does not respond in writing within the 30-day period, the client is presumed to have waived the administrative review as well as access to a fair hearing, and the CSHCN program may take the proposed action. If the client so requests in writing, the CSHCN program shall conduct an administrative review concerning the circumstances on which the proposed denial, modification, suspension, or termination [~~of the client's eligibility for services~~] is based within ten days after receiving the request and shall give the client written notice of the decision and the supporting reasons.

(2) (No change.)

§38.15. Children With Special Health Care Needs Advisory Committee.

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

(c) Purpose. The purpose of the committee is to provide advice to the board and program staff in developing comprehensive systems of health care for children with special health care needs and their families.

(d) (No change.)

(e) Committee abolished. By January 1, 2007 [~~2003~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 15 [~~18~~] members.

(1) The composition of the committee shall include seven [~~six~~] consumer representatives [~~, three special health care needs representatives,~~] and eight [~~nine~~] nonconsumer representatives.

(A) Consumer members include family members [~~parents~~] of children with special health care needs receiving services from the CSHCN program, Medicaid, Medicaid waiver programs, CHIP, or other publicly-funded programs for children with special health care needs; adults with disabilities who have received services as children with special health care needs; and representatives of consumer advocacy organizations that represent children with special health care needs.

[~~(B) Special health care needs representatives include family members of children with special health care needs or adults with disabilities. The family members or adults may also be service providers.~~]

(B) [~~(C)~~] Nonconsumer members include service providers for children with special health care needs who are enrolled as CSHCN, CHIP or Medicaid providers; representatives of professional associations or [~~whose members provide services to children with special health care needs and their families ;~~] representatives from institutions of higher education with expertise in public health and children with special health care needs; and health care professionals [~~other service providers~~] who deliver services to children with special health care needs. Nonconsumer members may also be family members of children with special health care needs or adults with disabilities.

(2) (No change.)

(3) Members of the committee as it existed on December 31, 2002 [~~November 1, 1998~~], shall continue to serve until the board appoints members according to this subsection.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The committee [~~chairman of the board~~] shall select from its members the [~~appoint a~~] presiding officer and an assistant presiding officer to begin serving on January 1 of each odd-numbered year.

(1) Each officer shall serve until December 31 of each even-numbered year. Each officer may holdover until his or her replacement is elected [~~appointed by the chairman of the board~~].

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

(4) If the office of assistant presiding officer becomes vacant, it may be filled [~~temporarily~~] by vote of the committee [~~until a successor is appointed by the chairman of the board~~].

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

[~~(7) The presiding officer and assistant presiding officer serving on January 1, 2003, will continue to serve until the chairman of the board appoints their successors.~~]

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

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

(5) A [~~simple majority of the members of the committee shall constitute a~~] quorum for the purpose of transacting official business is eight members.

(6) - (7) (No change.)

(j) - (m) (No change.)

(n) Statement by members.

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

(3) Committee members must avoid any action that might result in or give the appearance of impropriety.

(4) Committee members must disclose to the department any business relationships, employment or activities that present actual or potential conflicts with the performance of their advisory committee responsibilities.

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

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) (No change.)

§38.16. Procedures to Address CSHCN Program Budget Alignment.

(a) The department shall analyze actuarial cost projections concerning CSHCN clients and applicants, and shall monitor program projections and expenditure trends at least monthly to estimate whether appropriated funds and other available resources will:

(1) be less than projected program expenditures for the fiscal year (budget shortfall);

(2) exceed projected program expenditures for the fiscal year (budget excess); or

(3) approximately equal projected program expenditures for the fiscal year (balanced budget).

(b) When the CSHCN program projects a budget shortfall, the program shall use the following methodology to reduce program expenditures:

(1) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, and/or reimbursements;

(2) take the following actions in the order listed only until the resulting reductions in expenditures enable the program to project a balanced budget:

(A) implement administrative efficiencies, while avoiding changes which may jeopardize the quality and integrity of CSHCN program service delivery;

(B) establish and administer a waiting list for health care benefits according to the procedures in this section; and

(C) at the same time the waiting list is established:

(i) provide only limited prior authorization for family support services for ongoing clients, only in order to continue services already being provided at the time the waiting list is established and/or when the specific services are required to prevent out-of-home placement of the client (as documented by the CSHCN program regional case management staff/ contractors); and

(ii) disallow prior authorization (coverage) of diagnosis and evaluation services for financially eligible applicants who qualify for up to 60 days of eligibility for diagnosis and evaluation services only.

(D) place new applicants or re-applicants with lapsed eligibility who are determined eligible for program health care benefits (new clients for health care benefits) on the waiting list in order according to the date/time the client is determined eligible for program health care benefits;

(E) reduce/limit reimbursements for contractual service providers, while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services; and

(F) although the CSHCN program shall not impose a dollar cap for total health care benefits per client, the CSHCN program may reduce/limit reimbursements to fee-for-service providers by instituting the following measures in the following order, only if the measure will not result in a significant loss of providers and an associated decrease in client access to services:

(i) reduce reimbursement rates for inpatient hospitals, inpatient psychiatric hospitals, and inpatient rehabilitation hospitals by 5%;

(ii) reduce reimbursement rates for physicians, dentists, podiatrists, advanced nurse practitioners, and psychologists by 5%;

(iii) reduce reimbursement rates for inpatient hospitals, inpatient psychiatric hospitals, and inpatient rehabilitation hospitals by an additional 5%;

(iv) reduce reimbursement rates for physicians, dentists, podiatrists, advanced nurse practitioners, and psychologists by an additional 5%;

(v) reduce reimbursement rates for all other program services, except payment of clients' health insurance premiums, by 2%;

(vi) reduce reimbursement rates for all other program services, except payment of clients' health insurance premiums, by an additional 3%; and

(vii) other reductions/limitations in reimbursements for services if adopted by rule.

(G) place clients who are eligible to receive CSHCN program health care benefits and who currently are not on the waiting list (ongoing clients for health care benefits) on the waiting list in order according to the date/time that the client originally was determined eligible for program health care benefits, and ahead of any other groups of clients already subject to placement on the waiting list, and in the following order:

(i) ongoing clients for health care benefits who have two or more sources of health insurance coverage in addition to the CSHCN program;

(ii) ongoing clients for health care benefits who have only one source of health insurance coverage in addition to the CSHCN program;

(iii) ongoing clients for health care benefits in the following order by age groups: 21 years of age or older; 20 years of age; 19 years of age; 18 years of age; and

(iv) all other ongoing clients for health care benefits.

(c) If the procedures described in subsection (b)(2)(A)-(D) of this section have reduced program expenditures enough to address the budget shortfall, the program shall take the following steps in the order listed to further reduce program expenditures and generate additional cost savings in order to remove as many new clients for health care benefits as possible from the waiting list:

(1) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, and/or reimbursements;

(2) reduce/limit reimbursements for contractual service providers, while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services;

(3) although the CSHCN program shall not impose a dollar cap for total health care benefits per client, the CSHCN program may institute the following measures, in the following order, to reduce/limit reimbursements to fee-for-service providers only if the measure will not result in a significant loss of providers and an associated decrease in client access to services:

(A) reduce reimbursement rates for inpatient hospitals, inpatient psychiatric hospitals, and inpatient rehabilitation hospitals by 5%;

(B) reduce reimbursement rates for physicians, dentists, podiatrists, advanced nurse practitioners, and psychologists by 5%;

(C) reduce reimbursement rates for inpatient hospitals, inpatient psychiatric hospitals, and inpatient rehabilitation hospitals by an additional 5%;

(D) reduce reimbursement rates for physicians, dentists, podiatrists, advanced nurse practitioners, and psychologists by an additional 5%;

(E) reduce reimbursement rates for all other program services, except payment of clients' health insurance premiums, by 2%;

(F) reduce reimbursement rates for all other program services, except payment of clients' health insurance premiums, by an additional 3%; and

(G) other reductions/limitations in reimbursements for services if adopted by rule; and

(4) The program shall not take any other steps to reduce program expenditures.

(d) When the CSHCN program projects a budget excess resulting from the cost limitation or cost deferral procedures implemented according to this section or the program's receipt of additional funding, the program shall remove clients from the waiting list and increase

program expenditures utilizing the following steps in the order listed only until the program no longer projects a budget excess:

(1) take clients who were placed on the waiting list when they were ongoing clients off the waiting list according to their placement order;

(2) take clients who were placed on the waiting list as new clients off the waiting list according to the date/time they were determined eligible for program health care benefits and in the following group order:

(A) clients with an urgent need for health care benefits, as described in subsection (e) of this section;

(B) clients without an urgent need for health care benefits who have had a lapse in eligibility and who are re-applying for health care benefits; and

(C) clients without an urgent need for health care benefits and without prior program eligibility for health care benefits.

(3) The CSHCN program may provide health care benefits and pay outstanding bills for health care benefits for clients taken off the waiting list:

(A) as long as program funds are available; and

(B) if the outstanding bills for health care benefits are dated no more than 12 months before the date of the client's removal from the waiting list;

(4) If the CSHCN program projects a budget excess after no clients eligible for program health care benefits remain on the waiting list, the program may take the following actions in the following order:

(A) eliminate limitations on prior authorization for family support services;

(B) provide prior authorized coverage of diagnosis and evaluation services for financially eligible applicants who qualify for up to 60 days of eligibility for diagnosis and evaluation services only;

(C) remove any reductions/limitations to provider/contractor reimbursements that have been implemented; and

(D) expand program services.

(e) The program shall establish a protocol to determine whether a client has an "urgent need for health care benefits" by considering criteria including, but not limited to, the following:

(1) the physician or dentist who signs the client's application and/or the treating physician/dentist attests and/or documents the physician/dentist's determination that delay in receiving health care benefits could result in loss of life, permanent increase in disability, or intense pain/suffering;

(2) the client/family states that no other source of health insurance coverage is available to the client;

(3) information on the application for health care benefits indicates the complexity of the client's condition and/or need for care; and

(4) information received from CSHCN regional case management staff/contractors supports other information gathered and/or indicates that a delay in health care benefits could reasonably be expected to result in an out-of-home placement/ institutionalization of the client because the family cannot continue to care for the client.

(f) The CSHCN program central office may establish and administer the waiting list for health care benefits to address a budget shortfall.

(1) In order to facilitate contacting clients on the waiting list, the CSHCN program shall collect information including, but not limited to the following:

(A) the client's name, address, and telephone number;

(B) the name, address, and telephone number of a contact person other than the client;

(C) the date of the client's earliest application for health care benefits;

(D) the date on which the client became eligible for health care benefits;

(E) the client's functional limitations or needs;

(F) the range of services needed by the client; and

(G) a date on which the client is scheduled for reassessment.

(2) The waiting list is maintained continually from one fiscal year to the next. Clients must maintain eligibility for health care benefits to remain on the waiting list. A lapse of eligibility for health care benefits constitutes loss of position on the waiting list.

(3) The program shall refer clients on the waiting list to other possible sources of services, and shall contact waiting list clients periodically to confirm their continuing need for CSHCN program services.

(4) The program will offer case management services as needed/ desired to all clients who are eligible for health care benefits, including those on the waiting list for health care benefits.

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 September 6, 2002.

TRD-200205866
Susan Steeg
General Counsel
Texas Department of Health
Proposed date of adoption: November 19, 2002
For further information, please call: (512) 458-7236

CHAPTER 49. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM

25 TAC §49.16

The Texas Department of Health (department) proposes an amendment to §49.16 concerning the Oral Health Services Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) on matters relating to operation of the state dental program and Texas Health Steps dental services, and assists those programs and others in the department that require professional dental expertise. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §49.16 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review §49.16 in the *Texas Register* on March 22, 2002 (27 TexReg 2264). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, §2110.005) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1998, the board established a rule relating to the Oral Health Services Advisory Committee. The rule states that the committee will automatically be abolished on January 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until January 1, 2007.

The amendment amends provisions relating to the operation of the committee. Specifically, language is revised to reflect the recodification in the applicable law from the Texas Civil Statutes to the Government Code; to continue the committee until January 1, 2007; to change the process for filling vacancies in the offices of presiding officer and assistant presiding officer; and to clarify statements by members and the components that the committee must include in an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of amending the section as proposed.

Ms. McDonald has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee. There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee and terms of office. There are no anticipated economic costs to persons who are required to comply with the section proposed. There is no anticipated impact on local employment.

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

The amendment is proposed under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; and Government Code §2110.005 which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The amendment affects Health and Safety Code, Chapter 12., and implements Government Code, §2001.039.

§49.16. Oral Health Services Advisory Committee.

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

(c) Purpose. The purpose of the committee is to provide advice to the board and program staff on matters relating to operation of the state dental program and Texas Health Steps dental services, and to assist those programs and others in the department that require professional dental expertise.

(d) (No change.)

(e) Review and duration. By January 1, 2007 [~~2003~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f)-(g) (No change.)

(h) Officers. The committee [~~chairman of the board~~] shall select from its members the [~~appoint a~~] presiding officer and [~~an~~] assistant presiding officer [~~to begin serving on January 1 of each odd-numbered year~~].

(1) Each officer shall serve until December 31st of each even-numbered year. Each officer may holdover until his or her replacement is elected [~~appointed by the chairman of the board~~].

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

(4) If the office of assistant presiding officer becomes vacant, it may be filled [~~temporarily~~] by vote of the committee [~~until a successor is appointed by the chairman of the board~~].

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

[~~(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors.~~]

(i)-(m) (No change.)

(n) Statement by members.

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

(3) Committee members must avoid any action that might result in or give the appearance of impropriety.

(4) Committee members must disclose to the department any business relationships, employment or activities that present actual or potential conflicts with the performance of their advisory committee responsibilities.

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

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) (No change.)

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

Filed with the Office of the Secretary of State on September 5, 2002.

TRD-200205833

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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CHAPTER 100. IMMUNIZATION REGISTRY

The Texas Department of Health (department) proposes an amendment to §100.1, repeal of §§100.2 - 100.11, and new §§100.2 -100.6, concerning the Immunization Registry.

The Immunization Registry is a statewide repository for immunization information on Texas children. The information is available to public health districts, local health departments, physicians, schools, child-care centers, and parents when record request criteria are met. The proposed amendment, repeals and new rules are necessary to make the rules more accessible, understandable, and usable. The Immunization Division's main goal is to enhance the effectiveness of the Registry under its current authorized legislation. To accomplish this, the proposed rules simplify the process of sending immunization records and histories to the Immunization Registry while still maintaining a fully consented or "opt in" Registry. The rules place the responsibility for tracking consent on the department and Immunization Program and relieves insurance companies and Health Maintenance Organizations of this responsibility. The changes will reduce the burden on medical providers of maintaining, tracking, and archiving Immunization Registry consent forms obtained from parents. The proposed changes should populate the Registry with current consented immunization records and will help provide Texas parents with more complete and accurate immunization histories for their children.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§100.1 - 100.11 and has determined that reasons for adopting the sections continue to exist; however, a repeal of several rules and amendments are necessary to make the rules more accessible, understandable, and usable.

The department published a Notice of Intention to Review Chapter 100, §§100.1 - 100.11 as required by Government Code, §2001.039 in the *Texas Register* on January 14, 2000 (25 TexReg 275).

Linda S. Linville, M.S., R.N., Chief, Bureau Immunization and Pharmacy Support, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to the state as a result of enforcing and administering the sections as proposed. There will be no fiscal impact on local government.

Ms. Linville has also determined that for each year of the first five years the sections are in effect the impact on insurance companies, Health Maintenance Organizations and medical providers may present cost savings. The proposed changes will relieve insurance companies and Health Maintenance Organizations of the responsibility of tracking parental consent for inclusion of immunizations records in the Registry. It will also eliminate the need for these businesses to modify their computer systems in order to meet current reporting criteria. The proposed changes will reduce the burden on medical providers of maintaining, tracking and archiving Immunization Registry consent forms obtained from parents. This should also translate to cost savings for small and micro-businesses like clinics and physicians' offices. No impact on local employment is expected.

Ms. Linville has also determined that for each year of the first five years that the sections are in effect the public benefit anticipated through enforcement and administration of the sections as proposed will be to enhance the effectiveness of the registry by providing parents with more complete and accurate immunization histories for their children.

Comments on the proposal may be submitted to Janie Garcia, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7284, extension 6430, or (800) 252-9152. Comments will be accepted for 60 days following publication of this proposal in the *Texas Register*.

25 TAC §§100.1 - 100.6

The amendment and new sections are proposed under the authority of Health and Safety Code, §161.007, which gives the board the right to develop rules to implement the immunization registry; and Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The amendment and new sections affect the Health and Safety Code, Chapters 12 and 161.

§100.1. Definitions.

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

(1) Child--The person or individual under 18 years of age[~~,~~] to whom a vaccine has been administered.

(2) Consent--A statement signed by a parent agreeing that the child's immunization history can be included in the registry[~~,~~] and that the child's immunization record may be released from the registry. [~~Consent must be obtained one time only and is valid until the child attains 18 years of age. Parents may choose to withdraw consent at any time.~~]

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

[~~(4) Health Plan--An insurance company, a health maintenance organization, or another organization that pays or reimburses a provider for immunizations administered.~~]

(4) [~~(5)~~] Immunization history--An accounting of all vaccines that a child has received and other identifying information.

(5) [~~(6)~~] Immunization record--That part of the immunization registry that is released. An immunization record contains the name and date of birth of the person immunized; dates of immunization; types of immunization administered; and name and address of the provider administering the immunization.

(6) [~~(7)~~] Immunization registry--The database or single repository that contains immunization histories which include necessary personal data for identification. This database is confidential, and access to content is limited to authorized users.

(7) [~~(8)~~] Parent--A [~~The~~] parent, managing conservator, or guardian [~~from whom consent is obtained~~].

(8) [~~(9)~~] Provider--Any physician, health care professional, or facility personnel duly licensed or authorized to administer vaccines.

(9) [~~(10)~~] User--An entity or individual authorized by the department to access immunization registry data.

(10) [~~(11)~~] Vaccine--Includes toxoids and other immunologic agents which are administered to children to elicit an immune response and thus protect against an infectious disease.

§100.2. Confidentiality.

(a) The confidentiality of patients shall be protected in accordance with the Occupations Code, §159.002.

(b) A written confidentiality statement shall be signed by an authorized representative of the user.

(c) Any user of the immunization registry shall protect the confidentiality of all immunization histories, records, and reports.

§100.3. Informing Parent, Managing Conservator, or Guardian.

(a) A parent shall be informed that the department has established and maintained a single repository of immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective childhood communicable disease prevention and control efforts.

(b) The department shall provide written materials and forms to providers for the purpose of informing a parent about the immunization registry and specific information collected in that registry.

§100.4. Registry Consent and Withdrawal.

(a) A parent may consent to the inclusion of the child's immunization history in the immunization registry by doing one of the following:

(1) indicating consent at birth certificate registration;

(2) submitting written notification to the department in a format prescribed by the department or substantially similar; or

(3) completing written consent to be maintained with the provider.

(b) Consent is valid until 18 years of age unless withdrawn in writing.

(c) A parent may withdraw consent for the child to be included in the registry at any time by submitting written notification to the department in a format prescribed by the department or substantially similar. The department shall remove information from the immunization registry for any person for whom consent has been withdrawn.

§100.5. Reporting to the Registry.

(a) Immunization histories provided to the department whether electronically or by other means shall be submitted in a format prescribed by the department.

(b) A health care provider who administers an immunization to a person younger than 18 years of age shall provide an immunization history to the department unless:

(1) the immunization history is submitted to an insurance company, a health maintenance organization, or another organization that pays or reimburses a claim for an immunization to a person younger than 18 years of age; or

(2) the immunization history is for a person for whom consent has not been obtained or for whom consent has been withdrawn.

(c) An insurance company, a health maintenance organization, or another organization that pays or reimburses a claim for an immunization of a person younger than 18 years of age shall provide an immunization history to the department. The department shall verify consent where consent is unknown before including the reported information in the immunization registry.

(d) A provider shall, upon request of the department, clarify immunization history submitted to the department, or allow the department to inspect the immunization history of children whose names appear in the immunization registry.

§100.6. Official Immunization Record.

An immunization record obtained from the immunization registry shall be accepted as an official immunization record of the child.

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 September 6, 2002.

TRD-200205861
Susan K. Steeg
General Counsel
Texas Department of Health
Proposed date of adoption: November 19, 2002
For further information, please call: (512) 458-7236

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25 TAC §§100.2 - 100.11

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

The repeals are proposed under the authority of Health and Safety Code, §161.007, which gives the board the right to develop rules to implement the immunization registry; and Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The repeals affect the Health and Safety Code, Chapters 12 and 161.

§100.2. Inclusion of Information and Confidentiality.

§100.3. Providers and Health Plans.

§100.4. Withdrawal of Consent.

§100.5. Reportable Information.

§100.6. Information Included in the Immunization Registry Prior to September 1, 1997.

§100.7. Data Quality Assurance.

§100.8. Health Plans Shall Provide Immunization History to the Department.

§100.9. Reports.

§100.10. Acceptability As An Immunization Record.

§100.11. Confidentiality.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205860

Susan K. Steeg
General Counsel
Texas Department of Health
Proposed date of adoption: November 19, 2002
For further information, please call: (512) 458-7236

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CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §§123.4, 123.6 - 123.12

The Texas Department of Health (department) proposes amendments to §§123.4, and 123.6 - 123.12 concerning the Respiratory Care Practitioners Certification Program. Specifically the amendments cover fees; application requirements and procedures; types of certificates and temporary permits and applicant eligibility; examination; certificate renewal; inactive status; continuing education requirements; change of name or address; and professional and ethical standards.

The department proposes amendments to add an annual inactive status fee; delete language concerning notarization; delete the signature of the commissioner of health on certificates and permits; increase self study continuing education hours; and add language concerning sexual misconduct.

Becky Berryhill, Chief, Bureau of Licensing and Compliance, has determined that for each year of the first five years the sections are in effect, there will be a fiscal impact on state government as a result of enforcing or administering the sections as proposed. There will be an estimated increase in general revenue to the department estimated to be $3,750 in FY2003, $13,750 in FY2004, $15,000 in FY2005, $15,000 in FY2006 and $15,000 in FY2007. The fee covers request for inactive status. There will be no fiscal implication for local government.

Ms. Berryhill has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will continue to insure the appropriate regulations of respiratory therapists. There will be no adverse affect on small businesses and micro-businesses that require respiratory therapists services who utilize proper business management practices. The cost to persons and fiscal impact to the respiratory care practitioners requesting inactive status would be $25 for annual inactive status each year. There will be no impact on local employment.

Comments on the proposal may be submitted Pam K. Kaderka, Program Administrator, Respiratory Care Practitioners Certification Program, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6632. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §604.052, which requires the Respiratory Care Practitioners Certification Program to adopt rules, with the approval of the Texas Board of Health; and the Health and Safety Code §12.001 that are reasonable necessary to properly perform its duties under this Act.

The amendments affect the Occupations Code, Title 3, Health Professionals, Subtitle K, Chapter 604; and Texas Civil Statutes, Article 4512l.

§123.4. Fees.

The following fees are prescribed by the board and are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

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

(G) returned check fee--$50; [~~and~~]

(H) continuing education extension fee--$30; and[~~.~~]

(I) annual inactive status fee--$25.

(2) - (8) (No change.)

§123.6. Application Requirements and Procedures.

(a) (No change.)

(b) Required application materials.

(1) (No change.)

(2) Educational records. Applicants for a certificate, who were not certified or registered in respiratory care by the NBRC on or before September 1, 1985, or a temporary permit must submit:

(A) a photocopy which is [~~has been notarized as~~] a true and exact copy of an unaltered:

(i) - (iii) (No change.)

(B) a photocopy which is [~~has been notarized as~~] a true and exact copy of an unaltered certificate of completion from a respiratory care education program. The certificate must contain:

(i) - (v) (No change.)

(C) an expected graduation statement signed by the program director. Within 30 days of the completion date noted in the statement, the department must receive either:

(i) a [~~notarized~~] copy of the certificate of completion, as set out in subparagraph (B) of this paragraph; or

(ii) a [~~notarized~~] statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 days of the completion date.

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

(c) Information/Documentation form. Persons applying for any certificate or permit who are licensed, registered, or otherwise at the time of application to the department must submit with their applications a properly completed information/documentation form signed by an agency official. [~~The signature must be notarized if the agency does not have or does not affix its official seal on the form.~~]

(d) - (f) (No change.)

§123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.

(a) General. This section sets out the types of certificates and permits issued, and the qualifications of applicants for certification as respiratory care practitioners.

(1) (No change.)

(2) [~~Official certificates or permits shall be signed by the commissioner. Official identification cards shall bear the signature of the commissioner.~~]

[~~(3)~~] Any certificate or permit and identification cards issued by the department remain the property of the department and shall be surrendered to the department on demand.

(3) [~~(4)~~] Employers shall keep on file an unaltered photocopy of the practitioner's original certificate or permit and current identification card.

(4) [~~(5)~~] Neither the practitioner nor anyone else shall display or present to another person, employer or potential employer a certificate or permit or carry an identification card which has been photocopied or otherwise reproduced.

(5) [~~(6)~~] Neither the practitioner nor anyone else shall make any alteration on any certificate, permit, or identification card issued by the department.

(b) - (d) (No change.)

§123.8. Examination.

(a) - (d) (No change.)

(e) Results.

(1) (No change.)

(2) The applicant or temporary permit holder is responsible for arranging to have examination scores forwarded to the department. If the score report does not come directly from the NBRC in writing or on data tape, the results shall be in the form of a copy [~~which has been notarized as a true and exact copy~~] of the original of either:

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

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

(f) (No change.)

§123.9. Certificate Renewal.

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

(d) Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a [~~notarized~~] statement indicating how the person complied with the Act, §604.003.

(A) - (D) (No change.)

(2) - (5) (No change.)

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

(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status and the inactive fee must be postmarked prior to the expiration of the practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) A person on inactive status is [~~not~~] required to pay an annual inactive status [~~the annual renewal~~] fee as set out in §123.4 of this title (relating to Fees).

(2) (No change.)

(3) A person on inactive status is not required to complete the requirements in accordance with §123.10 of this title (relating to Continuing Education Requirements), except when returning to active practice as provided in paragraph (8)(D) [~~(4)(D)~~] of this subsection.

(4) Inactive status shall not be granted to a person whose certificate is not current and in good standing. Inactive status periods shall not exceed five years past the expiration date of the certificate, unless an extension for a longer period is specifically authorized by the department. [~~If a person on inactive status desires to reenter active practice, the person shall:~~]

[~~(A) notify the department in writing;~~]

[~~(B) complete appropriate forms;~~]

[~~(C) pay a renewal fee for the current renewal period plus a reinstatement fee equal to one-half the renewal fee; and~~]

[~~(D) submit to the department proof of successful completion, within 12-month period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.~~]

(5) The person on inactive status shall be notified annually that in order for the certificate to remain on inactive status, the inactive status notice shall be completed, signed and dated, and the inactive status fee shall be submitted to the department. [~~A person in compliance with this subsection is not subject to subsection (d) of this section.~~]

(6) A certificate that is not reactivated within the five year period cannot be renewed, restored, reissued or reinstated. If the person wishes to practice, he or she shall reapply for the certificate if requirements of the Texas Occupations Code, §604.103 are met.

(7) A person is subject to investigation and action under §123.14 of this title (relating to Violations, Complaints, and Subsequent Actions).

(8) If a person on inactive status desires to reenter active practice, the person shall:

(A) notify the department in writing;

(B) complete appropriate forms;

(C) pay a renewal fee for the current renewal period plus a reinstatement fee equal to one-half the renewal fee; and

(D) submit to the department proof of successful completion, within 12-month period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.

(9) A person in compliance with this subsection is not subject to subsection (d) of this section.

(h) (No change.)

§123.10. Continuing Education Requirements.

(a) (No change.)

(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

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

(4) up to six [~~four~~] credit hours during each renewal period of self-directed study to include Internet-based or computer-based studies, journals, including a post-test, which meets the requirements described in paragraphs (2)(A) and (2)(C) of this subsection.

(c) - (d) (No change.)

(e) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

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

(6) [~~self-study continuing education programs or activities except those set out in subsection (b)(4) of this section; or~~]

[~~(7)~~] activities which have been completed more than once during the continuing education period.

(f) - (g) (No change.)

§123.11. Changes of Name or Address.

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

(d) Before any certificate or permit and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a [~~notarized~~] copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The practitioner shall remit the appropriate replacement fee as set out in §123.4 of this title (relating to Fees).

§123.12. Professional and Ethical Standards.

The purpose of this section shall be to establish the standards of professional and ethical conduct required of a practitioner pursuant to the Act, §604.201(b)(4).

(1) (No change.)

(2) Relationships with patients/clients.

(A) - (H) (No change.)

(I) A practitioner or temporary permit holder shall not engage in sexual conduct, with a client, patient, co-worker, employee, staff member, contract employee, practitioner or temporary permit holder on the premises of any job establishment. For the purposes of this section, sexual conduct includes:

(i) any touching of any part of the genitalia or anus;

(ii) any touching of the breasts of a female except as necessary for the performance of a respiratory care procedure as defined in §123.2 of this title (relating to Definitions);

(iii) any offer or agreement to engage in any activity described in this subsection;

(iv) kissing without the consent of both persons;

(v) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;

(vi) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or

(vii) inappropriate sexual comments, including making sexual comments about a person's body.

(J) A practitioner shall not allow any individual, including a client, temporary permit holder, another practitioner, employee, or one's self to engage in sexual contact on the premises of any job establishment.

(3) - (6) (No change.)

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

Filed with the Office of the Secretary of State on September 5, 2002.

TRD-200205832
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 458-7236

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER A. RABIES CONTROL AND ERADICATION

25 TAC §§169.22, 169.27, 169.29, 169.31 - 169.33

The Texas Department of Health (department) proposes amendments to §§169.22, 169.27, 169.29, and 169.31 - 169.33 concerning rabies control and eradication. Specifically, the sections cover definitions, quarantine method and testing, vaccination requirement, interstate movement of dogs and cats into Texas, international movement of dogs and cats into Texas, and submission of specimens for laboratory examination. The amendments change the minimum rabies vaccination interval to reflect current vaccine technology, and require vaccination of dogs and cats a minimum of every three years rather than every year.

Jane C. Mahlow, DVM, MS, Director of Zoonosis Control Division, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Mahlow 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 this will be that dog and cat owners will be required to vaccinate their animals a minimum of every three years rather than annually. However, the rule continues to allow for latitude at local and individual levels to shorten the vaccination intervals if indicated by ecology, animal, or owner circumstances. There is no anticipated cost to small businesses or microbusinesses because comments offered during the public meetings held to discuss these rules by individuals representing small businesses and micro-businesses indicated that there will be no anticipated cost to them. To comply with the sections as proposed, cities and counties may be adversely impacted financially because many local animal control programs tie rabies vaccination with licensure, which is a source of their operating budget. Veterinarians may experience a decrease in income as some client visits decrease from annually to once every three years. There is no anticipated effect on local employment.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections 169.21 - 169.34 have been reviewed and the department has determined that reasons for adopting the sections continue to exist in that rules on these subjects are needed; however the rules need revision as described in this preamble. Sections 169.21, 169.23 - 169.26, 169.28, 169.130, and 169.134 are being proposed without changes, and are open for comment.

The department published a Notice of Intention to Review for §§169.21 - 169.34 as required by Government Code, §2001.039 in the *Texas Register* on May 19, 2000 (25 TexReg 4598). The

department received no comments due to the publication of the notices.

Comments on the proposal may be submitted to Jane C. Mahlow, DVM, MS, Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255, Rabies.Control@tdh.state.tx.us. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the Texas Board of Health (board) with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; §826.042, which requires the board to adopt rules on rabies quarantine; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect Health and Safety Code, Chapter 826.

§169.22. Definitions.

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

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

(4) Currently vaccinated - Vaccinated and satisfying the following criteria.

(A) The animal must have been vaccinated against rabies according to the label recommendations of a [~~as prescribed by the~~] United States Department of Agriculture (USDA) approved vaccine.

(B) (No change.)

(C) The time elapsed since the most recent vaccination has not exceeded the label recommendations for the vaccine. [~~Not more than 12 months have elapsed since the most recent vaccination.~~]

(5) - (30) (No change.)

§169.27. Quarantine Method and Testing.

(a) When a domestic dog, cat, or domestic ferret which has bitten a human has been identified, the owner or custodian will be required to place the animal in quarantine until the end of the 10-day observation period. Unvaccinated animals should not be vaccinated against rabies during the observation period; however, animals may be treated for unrelated medical problems diagnosed by a veterinarian. The observation period will begin at the time of the bite incident. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal. The animal must be placed in a department licensed facility specified by the local rabies control authority and observed at least twice daily. However, the local rabies control authority may allow the animal to be placed in a veterinary clinic. As an alternative, the local rabies control authority may allow home quarantine if the following criteria can be met.

(1) (No change.)

(2) The animal has been vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the label recommendations for the vaccine [~~within the last 12 months~~]. If an unvaccinated animal is not over four months of age at the time of the bite, it may be allowed home quarantine.

(3) - (4) (No change.)

(b) - (i) (No change.)

§169.29. Vaccination Requirement.

(a) The owner or custodian (excluding animal shelters) of each domestic dog or cat shall have the animal vaccinated against rabies by [~~before~~] four months of age [~~and within each subsequent 12-month interval thereafter~~]. The animal must receive a booster within the 12-month interval following the initial vaccination. Every domestic dog or cat must be revaccinated against rabies at a minimum of at least once every three years with a rabies vaccine [~~Rabies vaccines~~] licensed by the United States Department of Agriculture and administered according to label recommendations [~~directions must be used~~]. [~~Only vaccines with a three-year duration of immunity shall be used in dogs.~~] Livestock (especially those that have frequent contact with humans), domestic ferrets, and wolf-dog hybrids should be vaccinated against rabies. Nothing in this section prohibits a veterinarian and owner or custodian from selecting a more frequent rabies vaccination interval. Health and Safety Code, §§826.014 and 826.015 allow local jurisdictions to establish more frequent rabies vaccination intervals.

(b) Official rabies vaccination certificates shall be issued by the vaccinating veterinarian and contain the following information:

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

(5) date vaccination expires (revaccination due date);

(6) [~~(5)~~] rabies tag number if a tag is issued;

(7) [~~(6)~~] veterinarian's signature or signature stamp and license number.

(c) A copy of each rabies vaccination certificate issued shall be retained by the issuing veterinarian and be readily retrievable for a period of not less than five [~~three~~] years from the date of issuance.

(d) (No change.)

§169.31. Interstate Movement of Dogs and Cats into Texas.

Each dog and cat [~~All dogs and cats~~] over three months of age to be transported into Texas for any purpose shall be admitted only when vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the label recommendations for the vaccine [~~during the last 12 months and identified~~]. Additionally, identification must be provided by a vaccination certificate [~~certificates~~] showing the date of vaccination, vaccine used, and signature of [~~signed by~~] the licensed veterinarian who administered the vaccine.

§169.32. International Movement of Dogs and Cats into Texas.

Each dog and cat over three months of age to be transported into Texas for any purpose shall be admitted only when vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the label recommendations for the vaccine. Additionally, identification must be provided by a vaccination certificate showing the date of vaccination, vaccine used, and signature of the veterinarian who administered the vaccine. International movement of dogs and cats into Texas will also include any [~~proceed in accordance with the~~] rules and regulations prescribed by the United States government [~~Public Health Service~~].

§169.33. Submission of Specimens for Laboratory Examination.

Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

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

(6) The certified laboratories in Texas are:

(A) Austin - Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone the rabies shipment notification hotline at 1-800-252-8163, or the local telephone at: (512) 458-7595 [~~7598~~], (512) 458-7515, or (512) 458-7491 [~~7318 (after hours)~~].

(B) (No change.)

(C) Houston - Bureau of Laboratory Services, City of Houston Health Department, 1115 South Braeswood, Houston, Texas 77030, telephone: (713) 558-3468 or (713) 558-3467 [~~794-9613~~];

(D) San Antonio - Laboratory, San Antonio Metropolitan Health District, 332 West Commerce Street, Room 203, San Antonio, Texas 78205, telephone: (210) 207-8884 [~~8780~~].

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 September 6, 2002.

TRD-200205838
Susan Steeg
General Counsel
Texas Department of Health
Proposed date of adoption: November 19, 2002
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.63

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §411.63, governing interagency coordination of special education services to students with disabilities in residential care facilities, of Chapter 411, Subchapter B, concerning interagency agreements.

The amendments to §411.63 adopt by reference a new rule of the Texas Education Agency (TEA) at 19 TAC §89.1115, governing memorandum of understanding concerning interagency coordination of special education services to students with disabilities in residential facilities, which contains the text of a new memorandum of understanding (MOU) between the department, TEA, and seven other agencies. The new TEA rule was proposed for public comment in the January 18, 2002, issue of the *Texas Register* (27 TexReg 445) and adopted with revisions in the August 2, 2002, issue (27 TexReg 6851).

The amendments to §411.63 replace the phrase "residential care facilities" with "residential facilities." The amendments also specify that the new MOU is adopted by rule as required by the Texas Education Code (TEC) §29.012(d). The new MOU replaces an existing MOU, the text of which is contained in existing 19 TAC §89.1115. The existing MOU is not required by statute to be adopted by rule. Instead, it was developed and adopted by rule at the direction of the Texas Senate Committee on Health and Human Services, 73rd Texas Legislature, 1993. Senate Bill 4 (76th Legislative Session, 1999) amended TEC §29.012 to require adoption of the new MOU by rule. The bill also described new requirements for the MOU. In addition, the new MOU incorporates new provisions required by Senate Bill 1735, 77th Legislative Session, 2001, which further amended TEC §29.012.

The department proposed similar amendments in the February 8, 2002, issue of the *Texas Register* (27 TexReg 868). The proposal was withdrawn, effective July 23, 2002, in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7081).

Cindy Brown, chief financial officer, has determined that for each year of the first five year period that the amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local government.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected is better coordination of the free and appropriate public education of individuals under 22 years of age living in residential facilities. It is not anticipated that the amendments will have an adverse economic effect on small businesses or micro-businesses because they do not impose any measurable costs on residential facilities. It is not anticipated that there will be an economic cost to persons required to comply with the amendments. It is not anticipated that the amendments will affect a local economy.

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

The amendments are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under TEC, §29.012, which requires the department to adopt the MOU by rule.

The amendments will affect the Texas Education Code, §29.011.

§411.63. Interagency Coordination of Special Education Services to Students with Disabilities in Residential [~~Care~~] Facilities.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Education Agency (TEA) in 19 TAC §89.1115 (relating to Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential [~~Care~~] Facilities).

(b) The TEA rule contains the text of an MOU between the following state agencies:

(1) TDMHMR;

(2) TEA;

(3) Texas Department of Human Services;

(4) Texas Department of Health;

(5) Texas Department of Protective and Regulatory Services;

(6) Texas Interagency Council on Early Childhood Intervention;

(7) Texas Commission on Alcohol and Drug Abuse;

(8) Texas Juvenile Probation Commission; and

(9) Texas Youth Commission.

[~~(b)~~] [~~The TEA rule contains the text of an MOU between TDMHMR, TEA, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, Texas Commission on Alcohol and Drug Abuse, Texas Juvenile Probation Commission, and Texas Youth Commission.~~]

(c) The MOU concerns the provision of a free and appropriate education for school-age residents of residential [~~care~~] facilities and is required by the Texas Education Code, §29.012(d) [~~was developed at the direction of the Texas Senate Committee on Health and Human Services, 73rd Texas Legislature, 1993~~].

(d) [~~(c)~~] Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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 September 9, 2002.

TRD-200205886
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 206-5232

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §21.1007

The Texas Department of Insurance proposes new §21.1007, concerning unfair trade practices. The new section is proposed to eliminate unfair competition and unfair discrimination and to promote the availability and affordability of residential property insurance. The proposal prohibits an insurer from using water damage claim history as an underwriting guideline or to rate a new policy if an inspection has not been conducted by the insurer to determine the condition of the property. The proposed section is necessary as it has come to the attention of the Department that certain insurance companies are rating and declining to write residential property insurance policies based on the existence of a prior water damage claim. The apparent motivation for the use of water damage claim history to rate policies or as an underwriting guideline is to offset losses resulting from and to avoid future claims for mold damage. The Department believes that the decision to increase the premium on a policy or decline to write a policy based on water damage claim history rather than ascertaining the condition of the property through an inspection is unfair and should be prohibited. The denial or rating of insurance based on a prior water damage claim is based on the unsubstantiated assumption that a previous water damage claim resulted in improper repair of the damaged property. Whether or not prior water damage has been repaired can only be determined by an inspection of the property. The Department has previously prohibited underwriting guidelines based on the age and value of homes because of the unfair nature of guidelines that broadly deny coverage to a class of homes instead of underwriting each home based on the actual condition of the property. At the present time, although several insurers are using water damage claim history as an underwriting guideline, none have provided the data or actuarial analysis that shows the use of this guideline is actuarially sound. Further, underwriting guidelines based on water claim history without inspection abrogate an applicant's right to use the voluntary inspection program to qualify for a residential property insurance policy as established by the legislature in Texas Insurance Code Article 5.33B. Section 4 of Article 5.33B states, "the existence of an inspection certificate issued under this article creates the presumption that the property condition is adequate for residential property insurance to be issued." Section 4 (c) of Article 5.33B further specifies that "an insurer who receives an inspection certificate may not use property condition as grounds for refusing to issue or renew residential property insurance unless the insurer reinspects the property and specifies the areas of deficiency in its declination letter." Clearly, the legislature intended for consumers to be able to purchase insurance for their property or to be informed of the existing property conditions that need to be corrected to qualify for insurance and not be burdened with guidelines such as a prior water claim which they cannot erase from their record. However, an insurer may rate or decline to write residential property insurance based on a previous claim for water damage when the insurer has inspected the property using specific and objective criteria to evaluate the repair and has ascertained that the water damage has not been repaired.

The Department will consider the adoption of new §21.1007 in a public hearing under Docket Number 2532, scheduled for 9:30 a.m. on October 22, 2002, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the proposed section. Ms. Hamilton has also determined that for each year of the first five years the proposed section will be in effect, there will be no adverse effect on local employment or the local economy.

Ms. Hamilton has further determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of adopting the section will be the increased availability and affordability of residential property insurance through out the state. Additionally, insurers that conduct inspections of the property sought to be insured will glean much more objective information on which to base their underwriting decisions. Ms. Hamilton estimates that for the first year that the section is in effect, the primary cost to persons required to comply with the proposed section will be those costs that are required for the insurers to notify their personnel of the change in underwriting guidelines and rating and the updating of an agent's residential property policy writing manual with no additional costs to comply thereafter. The notification to the insurers' personnel would initially involve sending an electronic or paper copy memo to the affected persons informing them of the change in underwriting guidelines and rating. The labor cost estimate for sending

this notification is estimated to be $.50 per person notified and is based on a time estimate of 2 minutes for each notification at $.25 per minute. The 2001 Occupational Employment Statistics survey published by the Texas Work Force Commission shows that the mean hourly wage for insurance processing clerks in Texas is $14.68 and based on this statistic the labor cost for such clerks is approximately $.25 per minute. The additional cost of sending this notice also includes $.40 for postage and $.05 for system, printing, and paper. The total estimated cost per notice is $.95. The actual total cost to each insurer will vary depending on the number of agents that are employed by each insurer who would need to receive the notice. Additionally, it is likely that most of these notices will be sent electronically and since the computer systems needed to send these notices are already in place, the cost to provide the notices will probably be very minimal.

The updating of the insurers' residential property policy writing manual would involve amending the affected pages of the manual, printing the updated pages, and mailing them out to the agents. The labor cost estimate for amending the manual pages would be $20 for each insurer that is currently using the prohibited guideline. This labor cost estimate is based on a time estimate of one hour for an insurance underwriter to make the necessary changes to the manual pages. The 2001 Occupational Employment Statistics survey published by the Texas Work Force Commission shows that the mean hourly wage for insurance underwriters in Texas is $20.42. The labor cost estimate for handling the transmittal of the manual pages to the agents is estimated to be $.75 per agent and is based on a time estimate of 3 minutes per transmittal at $.25 per minute. The 2001 Occupational Employment Statistics survey published by the Texas Work Force Commission shows, as noted above, the labor cost for insurance processing clerks in Texas is approximately $.25 per minute. The additional costs per transmittal of the manual pages also include $.40 for postage and $.05 for system, printing, and paper. The total estimated cost per transmittal of the manual updates is $1.20. The actual total cost to each insurer will vary depending on the number of agents that are employed by each insurer who would need to receive the manual updates.

The assumptions on which these costs are based may change as the Department receives data during the comment period. The cost per hour of labor will not vary between the large and small businesses. There is no anticipated adverse economic effect on small or micro-businesses who are required to comply with the proposed section other than those outlined above and these businesses should recognize benefits through the revitalization of the economy resulting from the increased availability and affordability of residential property insurance. Regardless of the economic effect, it is neither legal or feasible to waive the requirements of the proposed rule for small or micro-businesses because of the disparate treatment that would result to consumers if small and micro-businesses were able to apply a different claims underwriting and rating standard.

To be considered, written comments on the proposed section must be submitted no later than 5:00 p.m. on October 21, 2002 to Gene Jarmon, Acting General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104. An additional copy of the comment should be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, MC 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104.

The new section is proposed pursuant to the Insurance Code Articles 21.21, 5.33B, 5.98 and §36.001. The Insurance Code Article 21.21 §13(a) provides that the Commissioner of Insurance may promulgate and enforce reasonable rules and may order such provision as necessary to accomplish the purposes of Article 21.21. Article 21.21 §1(a) provides that the purpose of Article 21.21 is to regulate trade practices in the business of insurance by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Article 21.21 §1(b) provides that Article 21.21 shall be liberally construed and applied to promote its underlying purposes as set forth in §1 of Article 21.21. Article 21.21 §3 provides that no person shall engage in this state in any trade practice which is defined in Article 21.21 as, or determined pursuant to Article 21.21 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. Article 5.33B establishes a voluntary inspection program to further the availability of residential property insurance for those that meet minimum standards for property condition insurability. Article 5.98 provides that the Commissioner of Insurance may adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5, Texas Insurance Code, Rating and Policy Forms, and which contain statutes governing residential property insurance. Insurance Code §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 only as authorized by statute.

The following statutes are affected by this proposal: Insurance Code Articles 21.21, 21.49-2B, 21.49-2E, and 5.33B

§21.1007. Prohibition of the Use of Underwriting Guidelines or Rating Based on a Water Damage Claim.

(a) Purpose. The purpose of this section is to address unfair competition and unfair discrimination in the residential property insurance market and promote the affordability and availability of residential property insurance by prohibiting insurers from rating or declining to write residential property insurance based on a previous claim for water damage on the property sought to be insured when the insurer has not inspected the property to ascertain the condition of the premises and whether or not the water damage has been repaired.

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

(1) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy or residential fire and allied lines policy.

(2) Underwriting guideline--A rule, standard, marketing decision, guideline, or practice; whether written, oral, or electronic; used by an insurer or its agent to bind, accept, reject, cancel, or limit coverages made available to classes of consumers.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(c) Prohibition.

(1) An insurer shall not use an underwriting guideline or rate based on a previous claim for water damage in making a decision regarding the writing of residential property insurance.

(2) The failure to comply with this subsection constitutes an unfair trade practice in the business of insurance in violation of the

Texas Insurance Code Article 21.21, and shall be subject to the provisions thereof.

(d) Exception. An insurer may rate or decline to write residential property insurance based on a previous claim for water damage on the property sought to be insured when the insurer has inspected the property, using specific and objective criteria to evaluate the repair, and has ascertained that the water damage has not been repaired.

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 September 5, 2002.

TRD-200205831
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 463-6327

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PART 4. STATE OFFICE OF RISK MANAGEMENT

CHAPTER 251. STATE EMPLOYEES--WORKERS' COMPENSATION

SUBCHAPTER E. RISK ALLOCATION PROGRAM

28 TAC §§251.503, 251.507, 251.509, 251.511, 251.515, 251.519

The State Office of Risk Management, (the Office), proposes amendments to certain sections of Chapter 251, Subchapter E. Amendments are proposed to, §§251.503, 251.507, 251.509, 251.511, 251.515, and 251.519 relating to the allocation program for state agency workers' compensation and risk management costs (Allocation Program) and addressing the manner in which the cost of workers' compensation and risk management programs will be assessed to covered agencies. The Office proposes these amendments to improve the Allocation Program and to address specific requests and comments submitted by covered state agencies. The proposed amendments will create a new formula for calculating a covered state agency's cost for participating in the program and will change the distribution of costs between covered agencies.

The amendment to §251.503(7) deletes a typographical error which appears in the adopted version of the rule.

The amendments to §251.507 remove Injury Frequency Rate (IFR) as an independent factor and adds Full Time Equivalents (FTEs) and Accepted Claims (modified by IFR) as factors in calculating assessments; modifies the way the formula is calculated; and changes the weights given to factors in the formula..

The amendment to §251.509 adds FTEs as a factor for determining an assessment for omitted or newly created agencies.

The amendment to §251.511 adds the requirement that the Office report the number of accepted claims in addition to IFR and claim's costs.

The amendments to §251.515 clarifies the Board's authority to modify formula components and changes the date by which covered agencies must submit requested changes to formula components to the Office.

The amendments to §251.519 propose to recalculate the re-appropriation of the existing claim fund in response to the new formula to make the allocation under the modified formula revenue-neutral for General Revenue for program participants in FY 2003.

Jonathan D. Bow, General Counsel, has determined that for the first year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rules. Any costs for compliance with the proposed subchapter result from the legislative enactment of §412.0123 and the legislative requirement that assessments be paid proportionately by funding source. The proposed subchapter is only applicable to state agencies and there will be no effect on large, small or micro-businesses. There is no impact on local employment or the local economy as a result of the proposal.

Mr. Bow has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit is that the Allocation Program will provide adequate funding for losses due to injuries to state employees and provide effective incentives to system participants to reduce injuries and losses to state workers to the benefit of taxpayers.

To be considered, written comments on the proposal must be received no later than 5 p.m. thirty days after date of publication. Comments should be delivered to Jonathan D. Bow, General Counsel, State Office of Risk Management, 300 W 15th St., 6th Floor, Austin, TX 78701, or P.O. Box 13777, Austin, TX 78711-3777.

Any requests for a public hearing should be submitted separately to the General Counsel.

The amendments to this subchapter are proposed under the authority granted by Texas Labor Code, Chapter 412, §412.031 that provides the Board may adopt rules necessary to implement the state's Workers' Compensation and Risk Management programs.

The following statutes are affected by the proposed new subchapter: Texas Labor Code, Chapter 412, §§412.012, 412.0121, and 412.053.

§251.503. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Payroll -- The total dollars paid for gross salary for all covered Full-Time Equivalents (FTEs), as reported by covered agencies.

(2) Injury Frequency Rate (IFR) -- The number of accepted claims, as reported by the State Office of Risk Management (the Office), per 100 covered FTEs. For purposes of this calculation all agencies are deemed to have no less than 100 employees.

(3) Claims Cost -- The net amount of payments made on claims, minus subrogation and restitution costs, as reported by the Office.

(4) Covered Agency -- A department, board, commission, or institution of this state with workers' compensation coverage under Chapter 501 of the Texas Labor Code (Labor Code).

(5) Covered FTE -- An FTE covered under workers' compensation coverage under Chapter 501 of the Labor Code.

(6) Plan Year -- The state fiscal year beginning on September 1 and ending on August 31 the following year.

(7) Risk Management For Texas State Agencies --[~~B~~] Risk management guidelines published by the Office[~~office~~] for implementation and use by covered state agencies.

§251.507. Calculating the Allocation [~~allocation~~] of the Total Asssessment [~~total assessment~~].

(a) The total assessment will be divided among participating agencies based on each agency's:

(1) payroll as a percentage of all participating agencies' payroll;

(2) FTEs [~~injury frequency rate~~] as a percentage of the total of all participating agencies' FTEs [~~injury frequency rates~~];

(3) the total number of accepted claims as multiplied by the agency's IFR modifier;

(4) [~~(3)~~] claim costs as a percentage of all claims payments made on behalf of participating agencies; and

(5) [~~(4)~~] such other relevant factors as the Board may determine.

(b) The Office will use a weighted three-year rolling average to calculate payroll, FTEs and injury frequency rate for each covered agency. In the weighted average the most recent completed plan year will constitute 50% of the total for that factor, the next most recent plan year will be given 33% of the total, and the earliest plan year will be given 17% of the total for the factor.

(c) The Office will use a simple three-year rolling average to calculate total number of accepted claims and claim costs for each covered agency.

(d) Subject to modification by the Board pursuant to §251.515 of this subchapter, the factors used in the calculation shall be weighted as follows:

(1) Payroll -- 12.5%[~~20%~~];

(2) FTEs -- 12.5%[~~Injury frequency rate -- 40%~~];

(3) Accepted Claims as modified by IFR [~~cost~~] -- 15%; [~~40%.~~]

(4) Claims cost -- 60%.

(e) Subject to modification by the Board pursuant to §251.515 of this subchapter, an IFR modifier shall be applied to an agency's total number of accepted claims as follows:

(1) Less than 3.50% (Low) = 0.95%;

(2) 3.50% up to 7.50% (Moderate) = 1.00%;

(3) Greater than 7.50% (High) = 1.05%.

(f) [~~(e)~~] The amount of the [~~of the~~] total allocation determined by an agency's modified total number of accepted claims[~~IFR,~~] cannot exceed 2% of an agency's weighted average payroll. The amount of the total allocation determined by claims [~~claims[2]~~] costs cannot exceed 4.0%[~~4%~~] of an agency's weighted average payroll. The difference between the formula-based assessment amount and cap established herein shall be allocated among all other agencies in the same manner and within the same factors as the initial assessment calculation.

§251.509. Omitted or Newly Created Agencies [~~newly created agencies~~].

(a) In the event that a covered agency is omitted from the annual assessment for any plan year, that agency will promptly:

(1) remit to the Office an assessed amount based on projected payroll and FTEs, as reported by the agency; and

(2) reimburse the Office for all covered losses incurred in that plan year in excess of the assessed amount.

(b) Notwithstanding §251.507(b) of this subchapter:

(1) if an agency has existed for only the two most recent plan years of the weighted three-year rolling average period, then the most recent completed plan year shall constitute 60% of the total for the weighted factors and the next most recent plan year shall constitute 40% of the total for the weighted factors;

(2) if an agency has existed for only the most recent plan year of the weighted three-year rolling average period, then the most recent completed plan year shall constitute 100% of the total for the weighted factors; and

(3) the assessment for an agency that was not in existence during any of the plan years of the weighted three-year rolling average period shall be calculated using that agency's current or projected payroll and FTEs, as reported by the agency, and the agency's actual claims costs, if any.

§251.511. Required Reports [~~reports~~].

(a) In addition to other reports required under this chapter, each covered agency shall report to the Office not later than February 1 of each plan year their total payroll and the number of covered FTEs, by funding source for the prior plan year. The report shall be made in the form and manner required by the Office.

(b) In addition to other reports provided by the Office to covered state agencies, the Office will report to each covered agency not later than March 1 of each plan year the agency's injury frequency rate, accepted claims, and claims cost for the three most recent plan years. The Office may satisfy this requirement by posting the information required on its web site.

(c) The reports required by this section may be amended, supplemented or corrected at any time prior to June 1 of the plan year. The calculation of assessments to agencies will be made using the data contained in these reports as of June 1 of each year.

§251.515. Changes in the Factors, Relative Weights, [~~factors, weightings,~~] Modifiers and Caps Used [~~caps used~~] in the Assessment [~~assessment~~].

(a) The Board may modify the factors, relative weights, modifiers or caps set forth in §251.507 of this subchapter in open meeting and after notice as provided by the Open Meetings Act.

(b) Any person may request that the Board make specific changes to modify the factors, relative weights, modifiersor caps used in calculating agency assessments. Specific requests for changes must be delivered to the General Counsel for the Office by March[~~June~~] 1 of any plan year to be considered for adoption in the following plan year.

(c) Any modification of the factors, relative weights, modifiersor caps used in calculating agency assessments will be made in accordance with the statement of purpose contained in §251.501 of this subchapter.

(d) The Office shall publish on its website the effective factors, relative weights, modifiers or caps to be used in calculating agency assessments on or before the 15th day following any modifications made by the Board pursuant to subsection (a) of this section.

§251.519. Distribution of Existing Claim Fund Appropriation [~~existing claim fund appropriation~~].

(a) The Office will make recommendations to the Comptroller of Public Accounts regarding the distribution of funds appropriated to the Office [~~on a one-time basis~~] for [~~FY2002 and~~] FY2003.[~~Funds distributed to participating agencies will become a part of the base-line appropriation for the agency receiving them. Agencies will receive an appropriation of the same amount in FY2003 that was calculated for that agency in FY2002.~~]

(b) The amount distributed to each agency will be calculated to make the assessment "revenue neutral" as it impacts general revenue funds held in the state treasury.

(c) The Office will recommend an amount be distributed to an agency calculated by subtracting from the agency's assessment the amount of the agency's liability for reimbursement of actual paid workers' compensation losses in FY2000 and the amount of the expected Risk Management contract which would have been charged without the change in funding methods. That total will be multiplied by the percentage of actual re-appropriation for the assessment approved by the Comptroller of Public Accounts for FY2002[~~salary expenditures for FY2000 funded by general revenue to determine the expected additional general revenue appropriation necessary~~] to maintain a revenue neutral status for general revenue funds in FY2003[~~FY2002~~].

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 September 9, 2002.

TRD-200205906
Jonathan D. Bow
General Counsel
State Office of Risk Management
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 472-0234

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SUBCHAPTER F. AGENCY ADMINISTRATION

28 TAC §251.601

The State Office of Risk Management (the Office) proposes new Subchapter F, §251.601, relating to agency administration and adding a rule relating to Historically Underutilized Business ("HUB") Program. The purpose of the new subchapter is to establish administrative rules relating to the operation of the Office, and in particular to comply with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which requires state agencies to adopt Texas Building and Procurement Commission (TBPC), formerly the General Services Commission, rules governing their HUB program for construction projects and purchases of goods and services paid for with state-appropriated funds.

The TBPC rules are found at 1 Texas Administrative Code ("TAC"), Title 1 Administration, Part 5 Texas Building and Procurement Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.28.

Jonathan D. Bow, General Counsel, has determined that for each year of the first five years that the proposed rules are in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone;

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone.

Mr. Bow has also determined that for each year of the first five years that the proposed rules are in effect, the public will benefit because of an increased awareness of business opportunities for HUBs and increased opportunities for purchase from contract awards to HUBs.

The proposed rules will have no adverse economic effect on small or large businesses or persons who seek to contract with the state because the proposed rules do not place additional economic burdens on small or large businesses or persons who seek to contract with the state. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposed rule should be delivered no later than thirty (30) days after the date of publication of this notice to Jonathan D. Bow, General Counsel, State Office of Risk Management, P.O. Box 13777, Austin, TX 78711-3777 or faxed to (512) 370-9144.

The new subchapter is proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which directs state agencies to adopt the TBPC's rules under §2161.002 as the agency's own rules. Those rules apply to agencies' construction projects and purchase of goods and services paid for with appropriated money. The new subchapter is also proposed under the authority granted by Texas Labor Code, Chapter 412, §412.031, that provides the Board may adopt rules necessary to implement the state's Workers' Compensation and Risk Management programs.

The following statutes are affected by the proposed new subchapter: Texas Labor Code, Chapter 412, §§412.012, 412.0121, and 412.053. This new subchapter implements the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003.

§251.601. Historically Underutilized Businesses Program.

Pursuant to Texas Government Code §2161.003, the State Office of Risk Management adopts by reference the Historically Underutilized Business Program rules of the Texas Building and Procurement Commission, as such rules may be amended by the commission from time to time. The rules may be found at 1 T.A.C. §§111.11-111.28. Copies are available upon request from the General Counsel, State Office of Risk Management, P.O. Box 13777, Austin, TX 78711-3777.

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 September 9, 2002.

TRD-200205907
Jonathan D. Bow
General Counsel
State Office of Risk Management
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 936-1503

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.560

The Comptroller of Public Accounts proposes an amendment to §3.560, concerning banking corporations. In accordance with Senate Bill 1125, 77th Legislature, 2001, new subsection (f)(3) provides apportionment guidelines for certain interest received from correspondent banks. New subsection (b)(3) provides a definition of "correspondent bank." The previous subsection (b)(3) that defined "legal domicile" has been moved to new subsection (b)(4). In accordance with the *Rylander v. Bandag Licensing Corporation* decision, subsection (c)(1) is being amended.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in (providing new information regarding tax responsibilities). This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.106.

§3.560. Banking Corporations.

(a) Effective date. Except as otherwise provided in this section, the provisions of this section apply to franchise tax reports originally due on or after January 1, 1992.

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

(1) Banking corporation (bank)--Each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Finance Code, Title 3, Subtitle A and each bank organized under the Federal Reserve Act, §25(a), (12 United States Code, §§611-631) (edge corporations), but does not include a bank holding company as that term is defined by the Bank Holding Company Act of 1956 (12 United States Code, §1841).

(2) Commercial domicile--The principal place from which the trade or business of the entity is directed.

(3) Correspondent bank--a United States depository institution or foreign bank, as defined by 12 C.F.R. §206.2(e), that accepts deposits of and/or performs banking services for insured depository institutions, and to which insured depository institutions have interbank liabilities regulated by 12 C.F.R. §§206.1 et seq. The term "correspondent bank" does not include a depository institution or foreign bank that is commonly controlled with the insured depository institution.

(4) [~~(3)~~] Legal domicile-The legal domicile of a corporation is its state of incorporation. The legal domicile of a partnership or trust is the principal place of business of the partnership or trust. The principal place of business of a partnership or trust is the location of its day-to-day operations. Where the day-to-day operations are conducted equally or fairly evenly in more than one state, the principal place of business is the commercial domicile.

(c) Banking corporations subject to franchise tax. [~~The following banking corporations are subject to Texas franchise tax.~~]

(1) All banking corporations that are chartered [~~, authorized to do business, or doing~~] or that do business in Texas beginning May 1, 1985, are subject to franchise tax, except those banks that are[~~unless~~] specifically listed [~~as not subject to tax under~~]in subsection (d) of this section.

(2) Beginning January 1, 1996, the following banking corporations are subject to Texas franchise tax:

(A) non-Texas banking corporations doing business in Texas solely in a fiduciary capacity and registered with the Texas Secretary of State's Office under the Probate Code, §105A; and

(B) banking corporations doing business solely on federal enclaves in Texas.

(3) For those banking corporations subject to tax pursuant to paragraph (2) of this subsection, January 1, 1996, is considered the banking corporation's beginning date for purposes of determining the banking corporation's privilege periods and for all other purposes of the Tax Code, Chapter 171.

(d) Banks not subject to tax. Unincorporated private banks, other than limited banking associations, doing business in Texas are not subject to Texas franchise tax.

(e) Other franchise tax provisions apply. All provisions of this subchapter concerning the Texas franchise tax are applicable to banking corporations. However, this section will control if it conflicts with another section of this subchapter.

(f) Apportionment of dividends and interest.

(1) This paragraph applies to franchise tax reports originally due before January 1, 2000. If a banking corporation has its commercial domicile in Texas, all dividends and interest received, including interest from the federal government unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation), are considered to be Texas gross receipts and gross receipts everywhere. If a banking corporation's commercial domicile is not in Texas, no dividends or interest received are considered to be Texas gross receipts but

all are considered to be gross receipts everywhere, unless otherwise specifically excluded from the receipts factor.

(2) For reports originally due on or after January 1, 2000, a banking corporation's dividends and/or interest are apportioned to the legal domicile of the payor. See §3.549(e)(13) of this title (relating to Taxable Capital: Apportionment) and §3.557(e)(13) of this title (relating to Earned Surplus: Apportionment) for additional information on apportioning dividends and interest.

(3) For reports that are originally due on or after January 1, 2002, a banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts everywhere.

(g) Earned surplus. Regarding the add-back of compensation of executive officers and directors of banking corporations and directors, managers, and participants of a limited banking association, see §3.558 of this title (relating to Earned Surplus: Officer and Director Compensation).

(h) Enforcement.

(1) All taxes, penalties, and interest due by a banking corporation are secured by a lien on all of the bank's property that is subject to execution. The lien attaches to all of the property of the bank liable for the taxes.

(2) The attorney general may bring suit in the name of the state to recover delinquent taxes, penalties, and interest.

(3) The banking commissioner shall appoint a conservator under the Finance Code, Title 3, Subtitle A, to pay the franchise tax of a banking corporation that is organized under the laws of Texas and that the commissioner certifies as being delinquent in the payment of the corporation's franchise tax.

(4) Except as provided in paragraph (3) of this subsection, a banking corporation that is organized under the laws of Texas or under federal law and has its main office in Texas will not have its corporate privileges forfeited by the comptroller for not paying its franchise tax.

(5) A banking corporation that is organized under the laws of Texas or under federal law and has its main office in Texas will not have its charter forfeited for not paying its franchise tax.

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 September 5, 2002.

TRD-200205825
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 21. PURPOSE AND SCOPE

34 TAC §21.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §21.1 relating to the statement of TRS policy.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the section continues to exist. This Chapter and others have been previously reviewed in an open meeting by the TRS Policy Committee. This Chapter and others are being posted for comments regarding whether the reason for adopting the rules continues to exist.

The proposed amendments delete language that implies that all statements of policy are reflected in the rules. In addition, throughout the section, the word "regulation(s)" is being replaced with "rule(s)" for consistency. Finally, because some TRS rules are adopted under the authority of statutes other than Title 8, Subtitle C, Government Code, an amendment to subsection (b) provides a more general reference to applicable law.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the section as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Jung, Deputy Director, has also determined that the public benefit will be a more accurate reference as to the purpose and scope of TRS rules. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the section as proposed for each year of the first five years the proposal will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendment is proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by these proposed changes.

§21.1. Statement of Policy.

~~[(a) The statements of policy from the minutes of the Board of Trustees of the Teacher Retirement System of Texas at all of its meetings from the first in 1937, have been compiled and codified in these rules.]~~

(a) [~~(b)~~]The rules of the Teacher Retirement System of Texas (TRS) have [~~This material has~~] been arranged generally according to subject matter and placed in numbered sections. Many of the rules [~~regulations~~] are pertinent to and affect more than one of the subjects listed in the section headings. No attempt has been made to include under each heading all of the policies or rules [~~regulations~~] which might be pertinent to that heading. The fact that a rule [~~regulation~~] is included under one heading shall not in any manner limit its application to subjects treated under other headings.

(b) [~~(c)~~]These rules [~~and regulations~~] are statements of policies in matters over which the board is given authority by applicable [~~the~~] statutes and of interpretations in matters where the meaning of the law is not readily apparent. They do not include matters in which

the board considered the intent of the law to be unmistakably clear. For this reason, these rules [and regulations] should be used in conjunction with other applicable provisions of law.[the Teacher Retirement Law (codified as the Texas Government Code, Title 8, Subtitle C)]

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 September 9, 2002.

TRD-200205891
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §§23.1, 23.4, 23.5, 23.7, 23.8

The Teacher Retirement System of Texas (TRS) proposes amendments to §23.1 concerning grievances and complaints; §23.4 concerning public participation in the adoption of rules; §23.5 concerning nominations for appointment to the Board of Trustees; §23.7 concerning the code of ethics for consultants and agents and §23.8 concerning expenditure reporting by consultants, advisors, and brokers.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §23.1 reflect the complaint procedures currently in use at TRS including the incorporation of the responsibility of the designated complaint officer. In addition, the amendments eliminate references to hearings with respect to a complaint. Hearings are permitted for administrative appeals and addressed in Title 34, Part 3, Chapter 43 and public comment is provided for at each Board meeting. The proposed amendments to §23.4 update the reference to the statute currently entitled the Administrative Procedure Act and the amendments provide more flexibility in the time period for providing a hearing on a proposed rule. The proposed amendments to §23.5 clarify that ballots must be received by TRS by the stated deadline and the amendments provide flexibility to allow for the possibility of submitting ballots by Internet as well as to contract with an outside entity for election duties. The amendments to §23.7 and §23.8 reflect minor wording and stylistic changes.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of various administrative procedures and the flexibility to allow for the utilization of technology in instances such as the submission of ballots for board elections. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

The following are affected by the proposed amendments:

§23.1-Gov't Code, Chapter 825, Subchapter B, §§825.113(c) and (d), Gov't Code, Chapter 825, Subchapter F, §825.511, and Gov't Code. Chapter 2113, Subchapter A, §§2113.002(b)(5) and 2113.006.

§23.4-Gov't Code, Chapter 2001, Subchapter B, §2001.021 and Gov't Code, Chapter 825, Subchapter B, §825.115

§23.5-Gov't Code, Chapter 825, Subchapter A, §825.002(f)

§§23.7 and 23.8-Gov't Code, Chapter 825, Subchapter C, §825.212

§23.1. [Grievances and] Complaints.

[(a)] Any person with a complaint regarding the delivery of services by the Teacher Retirement System of Texas (TRS) which cannot be[Grievances and complaints are usually] settled by correspondence or informal conference may submit the complaint to the designated TRS Complaint Officer. The Complaint Officer insures that a timely response is provided to the complainant. Information on how to submit a complaint is available upon request from TRS and is also found on the TRS Web site, www.trs.state.tx.us, in the information regarding the TRS Compact With Texans.[between the member or beneficiary and the staff of the Teacher Retirement System of Texas. Any person with a grievance or complaint which cannot be settled by correspondence or informal conference may appeal the decision of the staff to the executive director of the Teacher Retirement System of Texas. Request for hearing before the executive director must be in writing and include a clear statement of the grievance or complaint and be presented at least 10 days prior to the hearing. The hearing will be limited to the questions stated in the written request. The person complaining may be represented by counsel. Notice will be given of the time and place of the hearing.]

[(b) The decision of the executive director may be appealed to the Board of Trustees of the Teacher Retirement System of Texas, subject to the same rules and conditions as a hearing before the executive director. The executive director may, if he deems it advisable, set the original hearing before the board of trustees.]

§23.4. Public Participation in Adoption of Rules.

(a) "Interested person" means any member of the Teacher Retirement System of Texas (TRS); any beneficiary of a member; any retiree of TRS[the Teacher Retirement System of Texas]; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(b) Any interested person may informally request adoption of a rule by correspondence or conference with TRS staff members. If satisfactory results cannot be achieved in this manner, any interested person may petition TRS[~~the Teacher Retirement System of Texas~~] to adopt, amend, or repeal a rule by filing a clear, written request to initiate rulemaking procedures with the executive director. The petition shall set forth the exact text of the proposed rule and the petitioner's name and address, and the name, business address, and telephone number of petitioner's counsel, if any. The petition may also include written documents in support of the petition.

(c) The executive director shall grant or deny the petition within 60 days of its receipt. The executive director may consult informally with staff members and the petitioner in reaching a decision. The petition may be amended with consent of the petitioner at any time before a final decision is rendered.

(1) Upon granting the petition in writing, the executive director shall initiate rulemaking proceedings pursuant to the Administrative Procedure [~~and Texas Register~~] Act and the rules and regulations of TRS [~~the Teacher Retirement System of Texas~~].

(2) Denial of the petition by the executive director, and reasons therefor, shall be in writing. The petitioner may appeal this decision to the board of trustees provided that a written notice of appeal is filed with the executive director within 10 days after the decision of the executive director is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the board of trustees will occur more than 60 days after receipt of the petition by the executive director, and the petitioner is unwilling to waive the deadline for a final decision until that meeting, the decision of the executive director shall be a final decision of TRS. The final decision of the board shall be based on the written petition and written decision of the executive director unless the board orders a hearing on the petition. If the board approves the petition, the executive director shall initiate rulemaking proceedings pursuant to the Administrative Procedure [~~and Texas Register~~] Act and the rules and regulations of TRS [~~the Teacher Retirement System~~].

(d) Oral and written data, views, and arguments on a proposed rule may be submitted informally to the executive director by informal conference or correspondence within 20 days after publication of notice of the proposed rule in the Texas Register.

(e) A written request for a public hearing on a proposed substantive rule may be submitted to the executive director within 10 days after publication of notice of the proposed substantive rule in the Texas Register, provided that the request is made by 25 persons, a governmental subdivision or agency, or an association having at least 25 members. The request shall contain the name and address of each person requesting the hearing and shall clearly specify the proposed rule for which a hearing is requested.

(f) The executive director shall schedule the proposed rule for hearing within a reasonable time but in no event shall the hearing be scheduled [~~on a date no~~] earlier than seven days after notice of the hearing date is published [~~and no later than 20 days after receipt of the written request~~]. The executive director or the board of trustees may reschedule the hearing in the interest of justice or administrative necessity or for good cause; however, the proposed rule shall not be adopted prior to the requested hearing.

(g) The executive director shall designate himself, a TRS employee, or a specially appointed person as hearing officer to take the testimony of any interested person in support of or in opposition to the rule. The hearing officer shall designate the order of taking testimony and may establish reasonable time limits on oral testimony, provided that reasonable opportunity is given to amplify oral testimony in writing. All hearings will be held in the offices of TRS in Austin, Texas, unless for good cause TRS shall designate another place of hearing.

§23.5. Nomination for Appointment to the Board of Trustees.

(a) During any calendar year in which the term of office of a public school district member, institution of higher education member, or retired teacher member expires, the Teacher Retirement System of Texas (TRS) will conduct an election between March 15 and April 30 to select the nominees to be considered by the governor for appointment to the position.

(b) Public school district members of the system who are currently employed by a public school district may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members of the retirement system whose most recent credited service is or was performed for a public school district. Institution of higher education members of the system who are currently employed by an institution of higher education may have their names listed on the official ballot as candidates for nomination to the institution of higher education position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members whose most recent credited service is or was performed for an institution of higher education. Retired members may have their names listed on the official ballot as candidates for nomination to the retired member position by filing an official petition bearing the signature, printed or typed name, and social security number of at least 100 retirees of the system. Official petition forms shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be filed by January 15 of the calendar year in which the election is to be held. A qualified public school district member, institution of higher education member, or retiree may sign more than one candidate's petition as long as they are eligible to vote in the election of the candidate or candidates for whom they are signing.

(c) Upon verification of petitions by the system or its designated agent, the names of qualified candidates shall be printed on the ballot. The ballot shall also provide space for write-in candidates. Voting instructions [~~Ballots~~] shall be mailed on or before March 15 of the year in which the election is held to the last known home address of each active member or retiree. Ballots with member or retiree numbers (social security numbers) to be used for validation purposes must be received by TRS or its designated agent[~~returned to the Teacher Retirement System of Texas~~] by April 30 of the year in which the election is held in order to be counted. The executive director shall cause the ballots to be counted. Names of the candidates for each position receiving the three highest number of votes shall be certified by the executive director to the governor.

(d) When a vacancy of a public school district member, institution of higher education member, or retired member occurs for a reason other than the expiration of a term of office, the board of trustees may conduct an election at any time they determine appropriate. The board of trustees shall establish deadlines for filing petitions, the date of mailing ballots, the date for returning ballots, and any other necessary details related to the election process.

(e) When more than one public school district member position on the board of trustees is being contested at the same election, each candidate shall specify on his or her petition which position he or she is seeking by indicating expiration date of the term of office sought. Petitions which fail to specify shall be returned to the candidates for completion if time permits. Failure to designate a specific position by

the deadline shall disqualify the candidate. When more than one position is contested at the same election, a person may be a candidate for only one of the positions.

(f) Terms of Board Members run for six years and shall expire August 31. Terms expire on the following dates and every six years thereafter:

(1) Public school district appointment, Place One, August 31, 2001.

(2) Gubernatorial appointment, Place One, August 31, 2001.

(3) State Board of Education appointment, Place One, August 31, 2001.

(4) Public School district appointment, Place Two, August 31, 2003.

(5) Gubernatorial appointment, Place Two, August 31, 2003.

(6) State Board of Education appointment, Place Two, August 31, 2003.

(7) Higher Education appointment, August 31, 1999.

(8) Retiree appointment, August 31, 1999.

(9) Gubernatorial appointment, Place Three, August 31, 1999.

(g) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

§23.7. Code of Ethics for Consultants and Agents.

Any consultant or agent for the Teacher Retirement System of Texas (TRS)[~~retirement system~~] must comply with its [~~the system's~~] Code of Ethics for Consultants and Agents as amended from time to time. TRS [~~The Teacher Retirement System~~] adopts by reference the Code of Ethics for Consultants and Agents most recently amended on November 21, 1997. Copies of the Code of Ethics are available from TRS [~~the Teacher Retirement System~~] at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400 [~~397-6400~~].

§23.8. Expenditure Reporting by Consultants, Advisors, and Brokers.

Consultants, advisors, and brokers used by the Teacher Retirement System of Texas (TRS) [~~retirement system~~] must report expenditures made on behalf of any one trustee or employee of TRS [~~the system~~]. The reports must be filed on January 31 of each year with the Executive Director and must comply with the Expenditure Reporting Memorandum as amended from time to time. TRS [~~The Teacher Retirement System~~] adopts by reference the Expenditure Reporting Memorandum and the Expenditure Reporting Form for Contractors as most recently amended on May 23, 1997. Copies of the memorandum and the form are available from TRS at [~~the Teacher Retirement System~~] 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400 [~~397-6400~~].

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

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Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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34 TAC §23.2, §23.6

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

The Teacher Retirement System of Texas (TRS) proposes the repeal of §23.2 concerning information requests and §23.6 concerning trustee to trustee transfers.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The repeal of §23.2 is being proposed as the reasons for originally adopting the section no longer exists because TRS responds to requests for existing records according to current statutory requirements and responds to other kinds of information requests in a manner consistent with the System's fiduciary responsibilities and statutory limitations. The repeal of §23.6 is being proposed because the location of the rule in Chapter 23 is confusing as the rule applies to the payment of benefits and refunds from TRS. A new rule incorporating amendments to reflect updated changes in the Internal Revenue Code is simultaneously being proposed in this issue of the *Texas Register*, in Chapter 35, §35.2.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Mr. Jung, Deputy Director, has also determined that the public benefit will be the deletion of unnecessary language in TRS rules and better organization and clarification of the rule regarding direct rollovers from TRS. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the repeals as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The repeals are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

The following is affected by the proposed repeals:

§23.6 - Gov't Code, Chapter 825, Subchapter F, §825.509.

No other laws are affected by these proposals.

§23.2. Information Requests.

§23.6. Trustee to Trustee Transfers.

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

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CHAPTER 33. LEGAL CAPACITY

34 TAC §§33.1 - 33.7

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Chapter 33 currently designated "Legal Competence" and §33.1 concerning approval of optional settlement in favor of a minor; §33.2 concerning payments for the account of a minor child; §33.3 concerning the approval of optional settlement for an incompetent person, §33.4 concerning the approval of the selection of retirement option by an incompetent member; §33.5 concerning the approval of a designated beneficiary; and §33.6 concerning power of attorney. TRS also proposes a new §33.7 concerning acceptable signatures.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §§33.1-33.6 reflect terminology consistent with current legal usage and with the TRS procedures for payments to minors and legally incapacitated persons. A proposed amendment to §33.2 addresses requirement for payments for the account of an incapacitated person. A proposed new §33.7 conforms to Texas law permitting a notary to sign a document on behalf of a person who is physically unable to do so but who is not legally incapacitated. The new section also provides more information on acceptable assisted signatures by persons other than notaries.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the proposed new section and proposed amended sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of the TRS requirements related to the payment of benefits to minors or legally incapacitated individuals or when a member or beneficiary wishes to use a power of attorney. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposal will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The new section and amendments are proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

The following are affected by the proposed new section and amendments:

§§33.1-33.2--Gov't Code, Chapter 824, Subchapter E, §824.404(d)

§33.6--Gov't Code, Chapter 825, Subchapter F, §825.508

§33.7-Gov't Code, Chapter 825, Subchapter F, §825.508 and Gov't Code, Chapter 406, §406.0165.

No other laws are affected by these proposed changes.

§33.1. Selection of Plan for Payment of Death Claim for a Minor Child[~~Approval of Optional Settlement; Minor~~].

Any selection of a plan for payment [~~an optional settlement~~] of a death claim in favor of a minor child who has not had the disabilities of minority removed must be made [~~cannot be accepted by the Teacher Retirement System of Texas unless it has been approved~~] by the guardian of the estate of the child, by a person authorized in a court order, or as otherwise provided by the law.

§33.2. Payments for the Account of a Minor Child or Incapacitated Person.

(a) Payments for the account of a minor child who has not had the disabilities of minority removed must be directed by [~~cannot be made except to~~] the guardian of the estate of the child, by a person authorized in a court order, or as otherwise provided by the law.

(b) Payments for the account of a person who is legally incapacitated must be made as directed by the guardian of the estate of the incapacitated person or as otherwise provided by the law.

§33.3. Selection of Plan for Payment of Death Claim for an Incapacitated Person [~~Approval of Optional Settlement; Incompetent~~].

Any selection of a plan for payment[~~an optional settlement~~] of a death claimfor [~~in favor of~~] a person who is legally incapacitated must be made [~~incompetent or of unsound mind cannot be accepted by the Teacher Retirement System of Texas until it is approved~~] by the guardian of the estate of the incapacitated [~~incompetent~~] person or as otherwise provided by the law.

§33.4. Selection of Retirement Plan for an Incapacitated Person[~~Approval of Incompetent's Selection~~].

Any selection of a retirement plan for a person [~~option by a member~~] who is legally incapacitated must be made [~~incompetent or of unsound mind cannot be accepted by the Teacher Retirement System of Texas until it is approved~~] by the guardian of the estate of the incapacitated [~~incompetent~~] person or as otherwise provided by the law.

§33.5. Approval of Designated Beneficiary.

Any designation of beneficiary for any purpose on behalf of a person [~~by a member~~] who is legally incapacitated must be approved [~~incompetent or of unsound mind cannot be accepted by the Teacher Retirement System of Texas until it is approved~~] by a court of competent jurisdiction or as otherwise provided by the law.

§33.6. Power of Attorney.

(a) Teacher Retirement System of Texas (TRS) acknowledges the authority of an attorney in fact under a power of attorney that is durable and meets the requirements of the laws and rules in effect at the time the power of attorney was executed.

(b) A power of attorney is considered durable if it contains a statement showing the principal's intent that the authority of the attorney in fact may be exercised in the event of the principal's subsequent incapacity or disability.

(c) The authority of an attorney in fact under a durable power of attorney or a statutory durable power of attorney is acknowledged by TRS to the extent the authority is granted in the power of attorney. [~~Persons receiving payments from the Teacher Retirement System of Texas may give power of attorney to some person to receive, endorse, and cash their warrants if they are legally competent to give such powers. Such powers of attorney shall be duly notarized and witnessed. A person who is physically unable to sign because of paralysis or injury may be assisted in signing the document, but persons who are not mentally alert, legally competent, and aware of the consequences of their act cannot give such authority. Payments for the benefit of persons who are unconscious or of unsound mind can be made only to the guardian of the estate.~~]

§33.7. Acceptable Signatures.

(a) A person who has legal capacity but is physically unable to sign or make a mark may be assisted by a disinterested witness. For forms which require notarization, the notary attesting to the signature should make a statement on the document that assistance was requested and should include the name of the person assisting or signing the document. If no notary attestation is required on the form, a disinterested witness to the signing should make a statement on the document that assistance was requested, include the name of the person assisting, and sign the statement.

(b) A notary may sign the name of a person who has legal capacity but is physically unable to sign or make a mark if directed to do so by the individual, in the presence of a disinterested witness. The notary who signs the document should make a statement on the document that assistance was requested and that the signature was affixed by the notary in the presence of a disinterested witness whose name should be provided.

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

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1, §35.2

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Chapter 35 currently designated as "Correction of Error" and to §35.1 concerning computation of errors. TRS also proposes a new §35.2 concerning direct rollovers from TRS.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §35.1 provide for the correction of errors in TRS records of alternate payees in addition to the records of members and beneficiaries, as payments to alternate payees may at times require correction. Additional nonsubstantive amendments provide general clarification. The proposed new §35.2 implements Gov't Code §825.509 authorizing rollovers from TRS. This new section replaces §23.6 relating to trustee to trustee transfers which is simultaneously being proposed for repeal in this issue of the *Texas Register*. The proposed new section includes references to "direct rollovers" in lieu of "trustee to trustee transfers" to reflect recent changes to the Internal Revenue Code that cause the term "trustee to trustee transfer" to be used differently. In addition, the proposal includes an amendment to the title of Chapter 35 to more accurately reflect the subject of the two sections.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the new and amended sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be the ability to correct errors in TRS records of alternate payees and to correct benefit payments to those recipients accordingly. In addition, the relocation of the section regarding direct rollovers from TRS reflects better organization of the subject matter and provides clarification to members. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the new and amended sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendment is proposed under the Government Code, §825.109 which authorizes the board to correct errors in TRS records and correct benefit payments accordingly. The new section and the amendment are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by these proposed changes.

§35.1. Computation Error.

Should any error in the records result in any member , [~~or~~] beneficiary, or alternate payee under Gov't Code Section 804.005 receiving more or less than the recipient [~~he~~] would have been entitled to receive had the records been correct, the Teacher Retirement System of Texas (TRS) shall correct such error [~~shall be corrected~~] and so far as practicable shall adjust the payment [~~shall be adjusted~~] in such a manner that the actuarial equivalent of the benefit to which the recipient [~~member or beneficiary~~] was correctly entitled will be paid.

§35.2. Direct Rollovers from TRS.

(a) A distributee of an eligible rollover distribution from the Teacher Retirement System of Texas (TRS) may elect to have the distribution paid directly to an eligible retirement plan by a direct rollover, to the extent required by Internal Revenue Code of 1986, as amended, and guidance issued thereunder.

(b) TRS shall develop procedures to implement this section in accordance with the Internal Revenue Code of 1986, §401(a)(31), as amended, and related regulations. Terms used in this section shall have the meaning assigned in the Internal Revenue Code of 1986, as amended.

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

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CHAPTER 39. PROOF OF AGE

34 TAC §39.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §39.1 concerning the establishment of date of birth.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continues to exist. This section and others have been previously reviewed in an open meeting by the TRS Policy Committee. This section and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §39.1 provide clarification to the list of documents TRS will accept in the reliable establishment of the date of birth. The proposed amendment also deletes a reference to "executive secretary" as the title no longer exists.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the section as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification to members and beneficiaries of the documents acceptable to TRS to reliably establish date of birth. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the section as proposed for each year of the first five years the proposal will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendment is proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by these proposed changes.

§39.1. Establishment of Date of Birth.

(a) Date of birth may be established by any one of the following:

(1) an original birth certificate or a legible unaltered copy thereof;

(2) a delayed birth certificate in accordance with Texas Civil Statutes, Article 4477, Rule 51a, or a legible unaltered copy provided by the Bureau of Vital Statistics [~~. Other copies are not acceptable. If birth occurred in the State of Texas, your application should be made to the county clerk of the county in which birth occurred. It is not necessary that the county now have any record of your birth~~];

(3) a delayed birth certificate issued by the state in which birth occurred or a legible unaltered copy provided by the registration agency [~~is required~~];

(4) an [~~the~~] original baptismal record or parish record wherein the age of the individual at the time of baptism is given, or a legible unaltered copy of such record;

(5) a [~~the~~] family Bible record when properly abstracted or copied and accompanied by the prescribed affidavit forms issued by the Teacher Retirement System of Texas (TRS);

(6) a report from the Bureau of Census [~~, Pittsburgh, Kansas,~~] stating the age of the individual at a census year when the individual was less than 20 years of age;

(7) a signed letter from the Social Security Administration indicating a date of birth which has been accepted by Social Security Administration;

(8) an affidavit made by a TRS employee from naturalization or citizenship papers;

(9) for a member, an original birth certificate or a legible unaltered copy thereof when there is no given name listed for the infant as long as it is consistent with other birth information in the TRS file;

(10) an alien registration card;

(11) a hospital birth record signed by the administrator or custodian of records of the hospital;

(12) in the event none of these is obtainable, such other evidence of age as may be approved by TRS. [~~the executive secretary;~~]

(b) [~~(13)~~] If [~~if~~] there is any question concerning a copy of the documents listed in this section, a certified copy of the document may be required.

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

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CHAPTER 45. FRANCHISE TAX

34 TAC §45.1, §45.2

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

The Teacher Retirement System of Texas (TRS) proposes the repeal of Chapter 45 entitled "Franchise Tax", including §45.1 concerning the certification of payments and §45.2 concerning false statements.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. This Chapter and others have been previously reviewed in an open meeting by the TRS Policy Committee. This Chapter and others are being posted for comments regarding whether the reason for adopting the rules continue to exist.

The repeal of these sections is being proposed as the reasons for originally adopting the sections no longer exist due to the repeal of the statute setting out the requirement for certification of payment of franchise taxes. See, HB 2914, §94(1), 77th Legislature, Regular Session. In addition, the availability of certain information through the Internet provides alternative procedures in the verification of franchise tax payment status.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the repeals will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Mr. Jung, Deputy Director, has also determined that the public benefit will be flexibility for TRS to use current technology to verify franchise tax payment status and to use standard contract terms that are appropriate in light of available technology. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the proposed repeals for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The repeal is proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by these proposed changes.

§45.1. Certification of Payment

§45.2. False Statement

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 September 9, 2002.

TRD-200205897
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §§51.1, 51.2, 51.5, 51.11

The Teacher Retirement System of Texas (TRS) proposes amendments to §51.1 concerning advisory and auxiliary committees; §51.2 concerning vendor protests, dispute resolutions, and hearings; and §51.11 concerning historically underutilized businesses. In addition, TRS is proposing a new §51.5 concerning waiver of the deadline to remit deposits and documentation.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §51.1 correct the name of the TRS-Care program to "Texas Public School Retired Employees Group Insurance Program" in accordance with the law effective September 1, 2002. The proposed amendments to §51.2 correct the name of the agency previously designated as the "General Services Commission" in accordance with legislation passed during the 77th Regular Session. Other proposed amendments to this section clarify the procedures for protest by a vendor and permit the delegation of responsibilities by the Executive Director to a designee. The proposed amendments also provide that if a protest is filed, TRS may proceed with contract activity unless there is a decision by the Executive Director to stay the activity. The proposed amendments to §51.11 reflect changes in the law that abolished the General

Services Commission and created a new replacement agency and transferred some of the duties relating to the Historically Underutilized Business Program to the Department of Information Resources.

The proposed new §51.5 authorizes TRS to consider a one-time waiver of the statutorily imposed deadline for school districts to submit payments to the System. The proposed new section also prohibits additional waivers except in the case of a catastrophic event.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the new and amended sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of the procedures related to vendor protests as well as the procedures and requirements to participate in the Historically Underutilized Business Program. The public benefit of the proposed new §51.5 will be to provide notice to school districts of the requirements to request a one time waiver of the deadline to remit all member and employer deposits. Mr. Jung has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The new section and amendments are proposed under Government Code, Chapter 825, §825.102 which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and the transaction of the business of the Board. The amendments to §51.1 are also proposed under Government Code, Chapter 825, §825.114 which allows TRS to create any advisory committee considered necessary. The TRS Medical Board is created under §825.204 of the Government Code. The Retirees Advisory Committee is created under Art. 3.50-4, §6 and 3.50-4A of the Insurance Code. A Credentialing Committee is authorized under Art. 3.50-4, §18C of the Insurance Code. The amendments to §51.2 are also proposed under Government Code, Chapter 2155, §2115.076 which requires TRS to adopt a protest procedure. The new §51.5 is also proposed under Government Code, Chapter 825, §825.408(a) which authorizes TRS to grant a waiver of the deadline. The amendments to §51.11 are also proposed under Government Code Chapter 825, §825.514 which states that the system is subject to provisions relating to historically underutilized businesses. In addition, Government Code §2161.003 requires that agencies adopt rules for the purchase of goods and services from historically underutilized businesses.

No other laws are affected by these proposed changes.

§51.1. Advisory and Auxiliary Committees.

(a) The following committees are created for a period which will expire at the end of sunset review for the Teacher Retirement System of Texas (TRS) [~~TRS~~] which is September 1, 2007, unless continued by the outcome of the sunset process, to advise or otherwise serve the retirement system and are deemed necessary to assist the Board of Trustees in performing its duties:

(1) a Medical Board, composed of three licensed physicians as provided by Government Code, §825.204;

(2) a Retirees Advisory Committee for the Texas Public School Retired Employees Group Insurance Program, composed as provided by the Insurance Code, Article 3.50-4, Section 6;

(3) regional credentialing committees composed of health care practitioners as provided by the retirement system's health care network policies; and

(4) a Medical Advisory Committee composed of health care practitioners and administrators as provided by the retirement system's health care network policies.

(b) The duties of these committees are established by applicable statute or policies of the Board of Trustees.

(c) The members of the Medical Board shall be paid, as independent contractors, fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. The members of the credentialing committees and the Medical Advisory Committee may be paid fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. To the extent advisory committees are composed of independent contractors they are to be considered consultants employed by the retirement system under the authority recognized by the Government Code, §2254.024.

(d) Members of the Retirees Advisory Committee for the Texas Public School Retired Employees Group Insurance Program are entitled only to reimbursement for actual and reasonable expenses incurred in performing functions as members of the committee.

§51.2. Vendor Protests, Dispute Resolution, and Hearing.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Teacher Retirement System of Texas (TRS). Purchases made by the Texas Building and Procurement Commission [~~General Services Commission~~] on behalf of TRS are addressed in Texas Administrative Code, Title 1, Chapter 111. Purchases made by the Department of Information Resources on behalf of TRS are addressed in Texas Administrative Code, Title 1, Chapter 201.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to TRS [~~the chief officer in whose area the action is (was) being processed~~]. Such protests must be in writing and received in the [~~Chief Financial Officer's~~] office of the chief officer in whose area the action is (was) being processed [~~or the Executive Director's office~~] within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements set forth in subsection (c)[~~(d)~~] of this section. Copies of the protest must be mailed or delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

[~~(c) In the event of a timely protest or appeal under this section, the retirement system will not proceed further with the solicitation or with the award of the contract unless the executive director, after consultation with the appropriate chief officer, makes a written determination that the award or contract without delay is necessary to protect substantial interests of the retirement system.~~]

(c) [~~(d)~~] A formal protest must be sworn and contain:

(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this section;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) [~~(e)~~] The chief officer shall have the authority, prior to appeal to the executive directoror his designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The chief officer may solicit written responses to the protest from other interested parties.

(e) [~~(f)~~] If the protest is not resolved by mutual agreement, the chief officer will issue a written determination on the protest.

(1) If the chief officer determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.

(2) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.

(f) [~~(g)~~] The chief officer's determination on a protest may be appealed by an interested party to the executive director or his designee. An appeal of the chief officer's determination must be in writing and must be received in the office of theexecutive director or his designee[~~director's office~~] no later than ten working days after the date of the chief officer's determination. The appeal shall be limited to review of the chief officer's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) [~~(h)~~] The general counsel shall review the protest, chief officer's determination, and the appeal and prepare a written opinion with recommendation to the executive directoror his designee. The executive director or his designeemay, in his or her discretion, refer the matter to the Board of Trustees at a regularly scheduled open meeting or issue a final written determination.

(h) [~~(i)~~]When a protest has been appealed to the executive director or his designee under subsection (f)[~~(g)~~] of this section and has been referred to the Board of Trustees by the executive director or his designeeunder subsection (g)[~~(h)~~] of this section, the following requirements shall apply:

(1) Copies of the appeal, responses of interested parties, if any, and general counsel recommendation shall be mailed to the Board members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the office of the executive director or his designeeat least 48 hours in advance of the open meeting.

(3) The Board of Trustees may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4) The Board of Trustees' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i) [~~(j)~~] Unless good cause for delay is shown or the executive director or his designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the executive director determines that it is in the interests of TRS not to proceed with the contract, the executive director may make such a determination in writing and partially or fully suspend contract activity.

(k) A decision issued either by the Board of Trustees in open meeting, or in writing by the executive directoror his designee, shall be the final administrative action of TRS [~~the retirement system~~].

§51.5. Waiver of Deadline to Remit Deposits and Documentation.

(a) On written request by a district, the Teacher Retirement System of Texas (TRS) may grant a one-time waiver for three months, of the deadline imposed by Gov't Code §825.408(a), to remit all member and employer deposits and documentation of deposits before the seventh day after the last day of a month. In support of the request, a district is required to submit the reasons for a waiver and an explanation of corrective measures being taken by the district toward compliance with Section 825.408(a).

(b) TRS shall not consider additional requests for a waiver of the deadline except in the case of a catastrophic event affecting the district's financial or technological resources.

(c) This section does not apply to health insurance.

§51.11. Historically Underutilized Businesses.

For the purpose of making purchases with funds appropriated to it, the Teacher Retirement System of Texas (TRS) adopts by reference the rules promulgated by the Texas Building and Procurement[~~General Services~~] Commission regarding historically underutilized businesses set forth in 1 TAC §§111.11-111.28 and the rule promulgated by the Department of Information Resources (DIR) set forth in 1 TAC §201.4 [~~(relating to Historically Underutilized Business Program)~~].

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

Filed with the Office of the Secretary of State on September 9, 2002.

TRD-200205899

Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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34 TAC §51.9

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

The Teacher Retirement System of Texas (TRS) proposes the repeal of §51.9 concerning electronic funds transfer for payments.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continues to exist. This section and others have been previously reviewed in an open meeting by the TRS Policy Committee. This section and others are being posted for comments regarding whether the reason for adopting the rules continue to exist.

The repeal of this section is being proposed as the reasons for originally adopting the section no longer exist because Gov't Code §§825.403 and 404.095(b) clearly set forth requirements to pay by electronic fund transfer.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the repeal will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeal.

Mr. Jung, Deputy Director, has also determined that the public benefit will be the deletion of unnecessary language in TRS rules. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the repeal as proposed for each year of the first five years the proposal will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The repeal is proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by this proposal.

§51.9. Electronic Funds Transfer for Payments

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 September 9, 2002.

TRD-200205898

Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.1, §145.2

The Policy Board of the Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.1, concerning parole decision-makers, and §145.2, concerning standard parole guidelines. The board proposes amendments to these sections to conform the language of the rules to that of current board practice and to adopt into rule the board's guidelines currently being used in making parole release decisions.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Garrett also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result of the amendments to these sections will be to bring the rules into compliance with current board practice.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendments.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §508.036 and §508.044, Government Code, which authorizes the policy board to adopt rules relating to the decision making processes used by parole panels and to determine which offenders are to be released to parole or mandatory supervision; §508.046, relating to extraordinary vote; and §508.144, relating to parole guidelines.

There is no cross-reference to the proposed amendments.

§145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The entire board is the parole release decision-maker of persons convicted of a capital felony offense, or an offense under §§21.11(a)(1), 22.021, or 12.42(c)(2) of the Penal Code. In these cases, the board may grant parole only upon a two-thirds vote of the entire membership of the board. The board is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, [~~a~~] three-member parole panels are [~~panel is the~~] parole decision-makers [~~decision-~~

maker]. A parole panel may consider [for parole] any eligible offender for release [person] and upon a [approval by panel] majority vote of the panel, may approve or deny release to supervision [such person on parole]. If a majority of the panel does not concur, the case is forwarded to a panel designated by the presiding officer (chair) to revote. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

§145.2. Standard Parole Guidelines.

(a) The parole panels are [decision-maker is] vested with complete discretion in making parole decisions to accomplish the mandatory duties found in Chapter 508, Government Code [Code of Criminal Procedure, Article 42.18].

(b) Parole guidelines have been adopted by the board to assist parole panels in the selection of possible candidates for release. Parole guidelines are applied as a basis, but not as the exclusive criteria, upon which parole panels base release decisions. [There are no mandatory rules or criteria upon which parole release decisions must be based. The parole decision-maker has the complete discretion to investigate a candidate for parole.]

(1) The parole guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to guide parole release decisions. [To assist the parole decision-maker in its investigation of a possible parole release, the board has adopted standard parole guidelines that are the basis, but not the exclusive criteria upon which parole decisions are made.]

(2) The risk assessment instrument includes two sets of components, static and dynamic factors. [The standard parole guidelines shall include:]

(A) Static factors include:

(i) Age at first admission to a juvenile or adult correctional facility;

(ii) History of supervisory release revocations for felony offenses;

(iii) Prior incarcerations;

(iv) Employment history; and

(v) The commitment offense.

(B) Dynamic factors include:

(i) The offender's current age;

(ii) Whether the offender is a confirmed security threat group (gang) member;

(iii) Education, vocational and certified on-the-job training programs completed during the present incarceration;

(iv) Prison disciplinary conduct; and

(v) Current prison custody level.

(3) Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level.

[(A) current offense or offenses;]

[(B) time served;]

[(C) the risk factors (consideration for public safety);]

[(D) institutional adjustment;]

[(E) the criminal history;]

[(F) official information supplied by trial officials including victim impact statements;]

[(G) information in support of parole.]

(c) The adoption and use of the [standard] parole guidelines does not imply the creation of any parole release formula, or a right or expectation by an offender [inmate] to parole based upon the guidelines. The risk assessment instrument and the offense severity scale, while utilized for research and reporting, are not to be construed so as to mandate either a favorable or unfavorable parole decision. [A parole score and salient factor while utilized for research and reporting is not to be construed so as to indicate the parole decision.] The [standard] parole guidelines [shall] serve as an aid in the parole decision process and the parole decision shall be at the discretion of the voting parole panel [parole decision-maker].

(d) The board is authorized to revise the [standard] parole guidelines as warranted.

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 September 6, 2002.

TRD-200205871
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.22

The Policy Board of the Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.22, concerning the rules and conditions of parole and the supervision of Texas offenders in other states. The amendments are proposed to update the language and bring the section into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendment will be a clarification of the Board's authority under law to make parole decisions.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendments.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.036, 508.044, and 508.154. The board interprets §508.036 and §508.044 as authorizing the Policy Board to adopt reasonable rules relating to the decision-making processes used by parole panels; and under §508.154, Government Code, relating to an offender's requirement to be amenable to the conditions of supervision ordered by a parole panel.

There is no cross-reference to the proposed amendments.

§145.22. Conditions and Rules of Parole.

(a) Every offender [~~inmate~~] approved for release on parole shall be issued a written statement listing the conditions and rules of parole in clear and intelligible language. The conditions and rules of parole must be agreed to and accepted by the offender [~~inmate~~] prior to release. The offender [~~inmate~~] may have additional conditions imposed by the parole panel after release, and shall be notified in writing of any such conditions.

(b) Continuance on parole [~~or mandatory supervision~~] is conditioned upon full compliance with all the conditions and rules of parole [~~or mandatory supervision~~] as imposed by the parole panel.

(c) The parole panel shall not impose as a condition for release to [~~on~~] parole [~~or mandatory supervision~~] that theoffender [~~inmate~~] be released only to a state other than the State of Texas.

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 September 6, 2002.

TRD-200205872
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 406-5458

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS
SUBCHAPTER J. BUDGETING

40 TAC §3.1003

The Texas Department of Human Services (DHS) proposes to amend §3.1003, concerning deductions, in its Texas Works chapter. The purpose of the amendment is to allow Temporary Assistance for Needy Families (TANF) and Medicaid applicants/recipients who qualify by having at least $1,000 in annual self-employment income to receive a farm loss deduction from other income. The amendment also adds an exemption disallowing deductions for costs related to producing income from illegal activities. In addition, excess shelter deductions are now allowed when an elderly or disabled member of a household is disqualified for any reason.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed section will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of $6,890 in fiscal year (FY) 2002; $0 in FY 2003; $0 in FY 2004; $0 in FY 2005; and $0 in FY 2006.

Mr. Hine 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 to allow all Texas Works programs to budget a farm loss the same way and reduce quality control errors due to incorrectly applied policy. The amendment will also simplify requirements and remove barriers to client participation. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the amendment concerns income deductions and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438-2909, in DHS's Texas Works section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-306, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes DHS to administer financial and nutritional assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.053 and §§33.001-33.027.

§3.1003. Deductions.

(a) Temporary Assistance for Needy Families (TANF). The Texas Department of Human Services (DHS) allows the following deductions from earned income of each member of the certified group, including members disqualified for noncompliance with a program requirement:

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

(5) farm loss deduction from other non-farm self-employment income. This deduction applies to eligible households with at least $1,000 annual gross self-employment income, and is allowed before applying the budgetary needs test. In applying the recognizable needs test, DHS deducts any remaining farm loss amount from other earned or unearned income after all other work-related expense deductions are taken.

(b) Food stamps. DHS allows deductions from income as stipulated in the Food Stamp Act of 1977 as amended by Title VIII, Section 809 of Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Exception: DHS does not allow a deduction for costs related to producing income from illegal activities. Regarding standard utility deductions, DHS allows either a Standard Utility Allowance (SUA) or a Basic Utility Allowance (BUA) as specified in 7 United States Code (U.S.C.) §2014(7)(C). Households that have out-of-pocket heating and cooling costs qualify for the SUA.

Other households can receive the BUA. Regarding a standard shelter deduction for homeless households, DHS allows the standard as computed annually as stipulated in 7 U.S.C. §2014(e)(5) [~~§2014(5)~~]. Regarding medical deductions, DHS allows households the option of choosing a standard medical deduction or actual allowable medical expenses. DHS will negotiate the amount of this standard deduction annually with the Food and Nutrition Service (FNS). DHS allows elderly or disabled household members disqualified for any reason to receive the excess shelter deduction, as cited in 7 Code of Federal Regulations §273.9(d)(6)(ii).

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 September 5, 2002.

TRD-200205837
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 20. COST DETERMINATION PROCESS

40 TAC §20.112

The Texas Department of Human Services (DHS) proposes to amend §20.112, concerning attendant compensation rate enhancement, in its Cost Determination Process chapter. The purpose of the amendment is to provide for the distribution of funds collected as recoupments to qualifying participating contracts that spent above their required attendant compensation rate level. The proposed amendment eliminates the six-month attendant compensation reporting requirement; requires preparers of annual reports to attend cost report training; allows for the delay or cancellation of the annual enrollment; clarifies the date of receipt of enrollment contract amendments; clarifies the time frame a provider must remain a nonparticipant after failing to submit a compensation report; and allows providers that acquire a contract through a contract assignment to modify their enrollment status. References to DHS have been deleted or replaced with references to DHS or its designee.

The Texas Health and Human Services Commission (HHSC) is proposing related policy in its Chapter 355 in this issue of the *Texas Register*.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hine 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 that providers that compensated their attendants greater than the payment rates they received may be eligible for additional payments up to the amount of compensation paid to their attendants. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal offers flexibility to contracted providers to participate in the attendant compensation rate enhancement system, eliminates paperwork requirements, and clarifies procedural requirements. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685- 3127 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-258, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§20.112. Attendant Compensation Rate Enhancement.

(a)-(d) (No change.)

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Department of Human Services (DHS) or its designee notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, DHS or its designee [~~The Texas Department of Human Services (DHS)~~] may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group or as individuals for purposes related to the attendant compensation rate enhancement. For the PHC/FC program, the participating provider must also specify if he wishes to have either priority 1, nonpriority, or both priority 1 and nonpriority services participating in the attendant compensation rate enhancement. If the PHC/FC provider selects to have their contracts participating as a group, then the provider must select to have either priority 1, nonpriority, or both priority 1 and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Requests to modify a provider's enrollment

status during an open enrollment period must be received by DHS or its designee [~~DHS's Rate Analysis Department~~] by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which DHS or its designee [~~DHS's Rate Analysis Department~~] has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to [~~DHS~~] instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to [~~DHS~~] instructions, signed by an authorized signator as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by DHS or its designee [~~DHS's Rate Analysis Department~~] within 30 days of the date [~~DHS's mailing~~] of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) until:

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

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted by participating contracted providers as follows.

(1) Contracted providers participating for the full rate year. Contracted providers participating for the full rate year must provide annual Attendant Compensation Reports as follows: [~~Annual report.~~]

(A) Participating contracted providers will provide DHS or its designee, in a method specified by DHS or its designee, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all [~~participating~~] contracts participating at the end of the rate year within one program of the provider. [~~The aggregate report must include contracts that are new, excluded from participation, voluntary withdrawal from participation, and contract assignments, as defined in subparagraphs (B)-(E) of this paragraph, which were part of the group for any portion of the rate year.~~] A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by DHS or its designee. [~~Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows.~~]

(B) Contracts whose cost report year, as specified in 1 TAC §355.105(b)(5) (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) Contracted providers participating for less than a full year. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows:

(A) A participating provider whose contract is terminated either voluntarily or involuntarily before the end of the rate year must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(B) In cases where a participating provider changes ownership through a contract assignment, the owner prior to the change of ownership must submit an Attendant Compensation Report, covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by DHS. The owner, after the change of ownership, must submit an Attendant Compensation Report [~~report~~] within 60 days of the end of the rate year, covering the period from the effective date of the contract assignment as determined by DHS to the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) A participating provider who is excluded from participation as per subsection (u) of this section must submit an Attendant Compensation Report within 60 days from the date of notification of the exclusion, covering the period from the beginning of the rate year to the date of exclusion as determined by DHS or its designee. [~~DHS will use this~~] This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(D) A participating provider who voluntarily withdraws from participation as per subsection (x) of this section must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by DHS or its designee, covering the period from the beginning of the rate year through the date of withdrawal as determined by DHS or its designee. [~~DHS will use this~~] This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(E) A participating provider who is a new contractor as per subsection (g) of this section must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the first day of the contract as determined by DHS [~~month following receipt by DHS's Rate Analysis Department of an acceptable enrollment contract amendment as per paragraph (g)(1) of this section~~] through the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

[~~(2) Six-month report. Within 60 days of the end of the first six months of the rate year, participating contracted providers will provide DHS, in a method specified by DHS, a six-month Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through~~

~~the last day of February of the rate year. The report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. Participating providers will use this six-month report to assist them in determining their level of compliance with the spending requirements and to take any appropriate action necessary to come into compliance with the spending requirements. The provider is responsible for the management of attendant compensation expenditures in compliance with the spending requirements stated in subsection (s) of this section.~~]

(3) Other reports. DHS or its designee may require other reports from all contracts as needed.

(4) Vendor hold. DHS or its designee will place on hold the vendor payments for any contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until DHS or its designee receives an acceptable Attendant Compensation Report [~~is received by DHS~~].

(A) Contractors participating at the end of the rate year [~~Participating contractors~~] who do not submit an [~~annual~~] Attendant Compensation Report in accordance with paragraphs (1), (2)(B), and (2)(E) of this subsection, completed in accordance with all applicable rules and instructions within 60 days of the vendor hold being placed will become a nonparticipant retroactive to the first day of the reporting period [~~nonparticipants~~] until the first day of the month after all of the following conditions are met:

(i) [~~(A)~~] the provider submits an acceptable annual Attendant Compensation Report;

(ii) [~~(B)~~] the provider submits a separate Attendant Compensation Report from the beginning of the current rate year to the date they were disenrolled as a participant;

(iii) [~~(C)~~] the provider repays to DHS funds that are identified for recoupment from subsection (s) of this section; and

(iv) [~~(D)~~] DHS or its designee receives, in writing by certified mail, a request from the provider to be restored to the participant status.

(B) Contractors not participating at the end of the rate year who do not submit an Attendant Compensation Report in accordance with paragraph (2)(A)-(D) of this subsection, completed in accordance with all applicable rules and instructions, within 60 days of the vendor hold being placed will become nonparticipants from the beginning of the rate year to the date of ownership change, exclusion, or withdrawal.

(i) Attendant Compensation Report contents. Each Attendant Compensation Report will include any information required by DHS or its designee to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports must be completed in accordance with the provisions of §§20.102-20.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program as per 1 TAC §355.102(d) (relating to General Principles of Allowable and Unallowable Costs).

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to DHS or its designee a signed enrollment contract amendment as described in subsection (f) of this section[~~, before the end of the enrollment period~~]. Participation is determined separately for each program specified in subsection (a) of this section except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC/FC, participation is also determined separately for priority 1 and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies DHS or its designee, in accordance with subsection (x) of this section, that it no longer wishes to participate or until DHS or its designee excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by DHS or its designee. Contracts excluded from participation will have their participation end effective on the date determined by DHS or its designee.

(l) Determination of attendant compensation rate component for participating contracts. For each of the programs identified in subsection (a) of this section an attendant compensation rate component [~~enhancement increments associated with each enhanced attendant compensation level~~] will be determined for participating contracts from subsection (k) of this section. The attendant compensation rate enhancement component [~~increments~~] will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement component [~~increments~~] will be determined on a per-unit-of-service basis applicable to each program or service.

(m) Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section DHS or its designee will calculate an attendant compensation rate component for nonparticipating contracts as follows.

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

(3) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit [~~hour~~] of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for all programs in subsection (a) of this section except for RC and AL/RC, which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.

(4) (No change.)

(n) Determination of attendant compensation rate enhancements. DHS or its designee will determine attendant compensation rate enhancement increments associated with each enhanced attendant compensation level. The attendant compensation rate enhancement increments will be determined by using data from sources such as cost reports, surveys, and/or other relevant sources. The attendant compensation rate enhancement increments will be determined by taking into consideration quality of care, labor market conditions, economic

factors, and budget constraints. The attendant compensation rate enhancement increments will be determined on a per-unit-of-service basis applicable to each program or service.

(o) (No change.)

(p) Granting additional attendant compensation rate enhancement increments. DHS or its designee divides all requests for attendant compensation rate enhancement increments into two groups: pre-existing rate enhancement increments which providers requested to carry over from the prior year and newly requested rate enhancement increments. Newly requested rate enhancement increments may be requested by providers that were nonparticipants in the prior year or by providers which were participants during the prior year desiring to be granted additional rate enhancement increments. Using the process described herein, DHS or its designee first determines the distribution of carry-over rate enhancement increments. If funds are available after the distribution of carry-over rate enhancement increments, DHS or its designee determines the distribution of newly requested rate enhancement increments as follows:

(1) DHS or its designee determines projected units of service for contracts requesting each enhancement increment and multiplies this number by the enhancement rate add-on amount associated with that enhancement increment as determined in subsection (n) of this section.

(2) DHS or its designee compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) (No change.)

(B) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, DHS or its designee may grant certain enhancement options priority for proportional distribution.

(q) Notification of granting of enhancements. Participating contracts are notified, in a manner determined by DHS or its designee, as to the disposition of their request for additional attendant compensation rate enhancement increments.

(r) (No change.)

(s) Spending requirements for participating contracts. DHS or its designee will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. If the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement, as specified in subsection (f) of this section, compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report [~~attendant compensation report~~] described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. DHS or its designee will calculate recoupment, if any, as follows.

(1) (No change.)

(2) The adjusted attendant compensation per unit of service from paragraph (1) of this subsection will be subtracted from the accrued attendant compensation revenue per unit of service to determine the amount to be recouped [~~by DHS~~]. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(3) (No change.)

(t) Notification of recoupment. Providers will be notified in a manner specified by DHS or its designee [~~within 90 days of the due date of their annual Attendant Compensation Report as described in subsection (h)(1) of this section or within 90 days of the date the report is submitted, whichever is later,~~] of the amount to be repaid to DHS. If a subsequent review or audit results in audit adjustments to the annual Attendant Compensation Report that changes the amount to be repaid to DHS, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid to DHS. DHS will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Exclusion from participation. Effective with the rate year that begins September 1, 2002, if [~~If~~] the Attendant Compensation Report [~~attendant compensation report~~] described in subsection (h)[~~(1)~~] of this section indicates that the participating provider did not meet their spending requirement [~~spend 90% of the accrued total attendant compensation rate described in subsection (r) of this section on attendant compensation spending~~] as determined from subsection (s) of this section, DHS or its designee will notify the provider of the noncompliance. If the subsequent [~~six-month~~] compensation report from subsection (h)[~~(2)~~] of this section indicates that the provider has not met their spending requirement [~~spent 90% of the attendant compensation revenue on attendant compensation spending~~], the contract will be excluded from participation in the attendant rate enhancement effective immediately upon notice of failure to meet the spending requirement. The contract will be excluded from participation in the attendant compensation rate enhancement and will remain a nonparticipant for the remainder of the rate year in which the determination was made plus an additional rate year. Providers whose contracts are participating as a group must meet the requirements of this subsection as a group or all the contracts of the group will be excluded.

(v) Contract terminations. For terminating participants, DHS or its designee will place a vendor hold on the payments of the contracted provider until DHS or its designee receives an acceptable Attendant Compensation Report, as specified in subsection (h)(2)[~~(1)~~](A) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the terminating provider's last vendor payment, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(w) Contract assignments. The following applies to contract assignments.

(1) Contracts participating under the prior legal entity will continue participation under the legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as individuals, participation in the attendant compensation rate enhancement confers to the provider or legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as a group, the contract will participate with the group of the legal entity accepting the contract assignment for purposes related to the attendant compensation rate enhancement. When the provider or legal entity accepting the contract assignment [~~new owner~~] has no contracts participating, the individual or group status of participating contracts under the old owner will transfer to the new owner. When the provider or legal entity accepting the contract assignment has its contracts participating as individuals or has no contracts participating, the provider or legal entity may submit an enrollment contract amendment to modify the enrollment of the assigned contract. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and be legible.

(2) When the contract assignment is an ownership change from one legal entity to a different legal entity, DHS or its designee will place a vendor hold on the payments of the existing contracted provider until DHS or its designee receives an acceptable Attendant Compensation Report specified in subsection (h)(2)[~~(1)~~](B) of this section and until funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the existing contracted provider's vendor payments that are being held, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify DHS or its designee in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to DHS or its designee by certified mail. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z) - (cc) (No change.)

(dd) Reinvestment. DHS or its designee will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) DHS or its designee has received an acceptable Attendant Compensation Report completed in accordance with all applicable rules and instructions.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) DHS or its designee determines units of service provided during the most recently completed reporting period by each qualifying contract and multiplies this number by the attendant compensation spending per unit of service minus the attendant compensation rate per unit of service for the reporting period.

(B) DHS or its designee compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

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

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by DHS or its designee.

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 September 5, 2002.

TRD-200205829
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 24. REIMBURSEMENT METHODOLOGY

SUBCHAPTER A. DETERMINATION OF PAYMENT RATES

40 TAC §24.101

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

The Texas Department of Human Services (DHS) proposes to repeal Chapter 24, Reimbursement Methodology, §24.101. The purpose of the repeal is to delete an obsolete general cost determination process rule for pre-1997 Cost Reports.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Hine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to have obsolete rule language eliminated from the rule base. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeal, because the rule being deleted is no longer in use. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by this repeal.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in Rate Analysis for Long Term Care-Aged & Disabled at the Texas Health and Human Services Commission (HHSC). Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§24.101. General Specifications and Methodology.

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 September 6, 2002.

TRD-200205843
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 46. LICENSED PERSONAL CARE FACILITIES CONTRACTING WITH THE TEXAS DEPARTMENT OF HUMAN SERVICES TO PROVIDE RESIDENTIAL CARE SERVICES

SUBCHAPTER G. SUPPORT DOCUMENTS

40 TAC §46.7001

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

The Texas Department of Human Services (DHS) proposes to repeal §46.7001, concerning reimbursement methodology for residential care program, in its Licensed Personal Care Facilities Contracting with the Texas Department of Human Services to Provide Residential Care Services chapter. The purpose of the repeal is to delete an obsolete reimbursement methodology rule applicable to pre-1997 Cost Reports. With the implementation of the cost determination process rules effective with the 1997 Cost Reports, there were two sets of reimbursement methodology rules for each Medicaid and non-Medicaid program operated by DHS for which cost reports were required. One set of reimbursement methodology rules applies to cost reports prior to 1997, and the other set of rules applies to cost reports after 1997. This proposal repeals the outdated (pre-1997) reimbursement methodology rule for the residential care program.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Hine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to have obsolete rule language eliminated from the rule base. Eliminating this section will lessen provider confusion as to which reimbursement methodology rules are in effect, since there no longer will be two sets of published reimbursement methodologies, each applicable to different cost-reporting periods. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeal, because the proposal deletes obsolete rule language and lessens provider confusion as to which program-specific reimbursement methodology rules are in effect. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by this repeal.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in Rate Analysis for Long Term Care-Aged & Disabled at the Texas Health and Human Services Commission (HHSC). Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§46.7001. Reimbursement Methodology for Residential Care Program.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205844
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER N. SUPPORT DOCUMENTS

40 TAC §§48.9801, 48.9802, 48.9805

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

The Texas Department of Human Services (DHS) proposes to repeal §48.9801, concerning reimbursement methodology for special services to persons with disabilities--shared attendant care; §48.9802, concerning reimbursement methodology for special services for handicapped adults--shared attendant care: 1997 and subsequent cost reports; and §48.9805, concerning reimbursement methodology for congregate and home-delivered meals, in its Community Care for Aged and Disabled chapter. For the shared attendant care program, the purpose of the repeals of §48.9801 and §48.9802 is to delete obsolete reimbursement methodology rules, since the payment amount for this DHS program no longer is based upon cost report data and the payment methodology is detailed in each provider's contract. For the congregate and home-delivered meals program, the purpose of the repeal of §48.9805 is to delete obsolete reimbursement methodology rules applicable to pre-1997 Cost Reports. With the implementation of the cost determination process rules effective with the 1997 Cost Reports, there were two sets of reimbursement methodology rules for each Medicaid and non-Medicaid program operated by DHS for which cost reports were required. One set of reimbursement methodology rules applies to cost reports prior to 1997, and the other set of rules applies to cost reports after 1997. This proposal repeals outdated reimbursement methodology rules for both the shared attendant care and congregate and home-delivered meals programs.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed repeals will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Hine also has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to have obsolete rule language eliminated from the rule base. Eliminating these sections will lessen provider confusion as to which program-specific reimbursement methodology rules are in effect, since there no longer will be two sets of published reimbursement methodologies, each applicable to different cost-reporting periods. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeals, because the proposal deletes obsolete rule language and lessens provider confusion as to which program-specific reimbursement methodology rules are in effect. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in Rate Analysis for Long Term Care-Aged & Disabled at the Texas Health and Human Services Commission (HHSC). Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§48.9801. Reimbursement Methodology for Special Services to Persons with Disabilities--Shared Attendant Care.

§48.9802. Reimbursement Methodology for Special Services for Handicapped Adults--Shared Attendant Care: 1997 and Subsequent Cost Reports.

§48.9805. Reimbursement Methodology for Congregate and Home-Delivered Meals.

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 September 6, 2002.

TRD-200205845
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 52. EMERGENCY RESPONSE SERVICES
SUBCHAPTER E. CLAIMS

40 TAC §52.502

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Human Services (DHS) proposes to repeal §52.502, concerning reimbursement methodology for emergency response services, in its Emergency Response Services chapter. The purpose of the repeal is to delete an obsolete reimbursement methodology rule applicable to pre-1997 Cost Reports. With the implementation of the cost determination process rules effective with the 1997 Cost Reports, there were two sets of reimbursement methodology rules for each Medicaid and non-Medicaid program operated by DHS for which cost reports were required. One set of reimbursement methodology rules applies to cost reports prior to 1997, and the other set of rules applies to cost reports after 1997. This proposal repeals the outdated (pre-1997) reimbursement methodology rule for the emergency response services program.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Hine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to have obsolete rule language eliminated from the rule base. Eliminating this section will lessen provider confusion as to which program-specific reimbursement methodology rules are in effect, since there no longer will be two sets of published reimbursement methodologies, each applicable to different cost-reporting periods. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeal, because the proposal deletes obsolete rule language and lessens provider confusion as to which program-specific reimbursement methodology rules are in effect. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by this repeal.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in Rate Analysis for Long Term Care-Aged & Disabled at the Texas Health and Human Services Commission (HHSC). Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§52.502. Reimbursement Methodology for Emergency Response Services.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205846
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 79. LEGAL SERVICES
SUBCHAPTER T. ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS

40 TAC §79.1917

The Texas Department of Human Services (DHS) proposes to amend §79.1917, concerning effect of an administrative determination of intentional program violation, in its Legal Services chapter. The purpose of the amendment is to bring DHS rules into compliance with federal law at 7 Code of Federal Regulations §273.16(b)(4), concerning the permanent disqualification of persons from the Food Stamp Program. Disqualification will result for persons who are convicted of knowingly receiving, transferring, acquiring, altering, or possessing coupons, authorization cards, or access devices contrary to the Food Stamp Act of 1977. The proposed rule changes the dollar amount of the disqualifying offense from one item of $500 or more to an aggregate amount of $500 or more.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hine 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 having rules that are in compliance with federal law. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal affects only individuals who are convicted of an offense in violation of the Food Stamp Act of 1977 and does not affect businesses of any size. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS Legal Services. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-315, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.038 and §§33.001-33.027.

§79.1917. Effect of an Administrative Determination of Intentional Program Violation.

(a) If a hearing officer finds that a household member committed an intentional program violation, the household member is disqualified from the Food Stamp and/or Temporary Assistance for Needy Families (TANF) programs for the following periods.

(1) (No change.)

(2) Food Stamps. The person is disqualified:

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

(C) permanently upon:

(i)-(iii) (No change.)

(iv) conviction of the offense of knowingly receiving, transferring, acquiring, altering, or possessing coupons, authorization cards, or access devices in any manner contrary to the Food Stamp Act of 1977 involving an aggregate amount [~~item~~] of $500 or more.

(D) (No change.)

(b)-(e) (No change.)

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205853
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

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CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER I. REIMBURSEMENT METHODOLOGY FOR DAY ACTIVITY AND HEALTH SERVICES (DAHS)

40 TAC §§98.6901 - 98.6906

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

The Texas Department of Human Services (DHS) proposes to repeal §98.6901, concerning introduction; §98.6902, concerning cost reporting procedures; §98.6903, concerning reimbursement determination, §98.6904, concerning allowable cost information; §98.6905, concerning list of allowable costs; and §98.6906, concerning unallowable costs, in its Adult Day Care and Day Activity and Health Services Requirements chapter. The purpose of the repeals is to delete obsolete reimbursement methodology rules applicable to pre-1997 Cost Reports. With the implementation of the cost determination process rules effective with the 1997 Cost Reports, there were two sets of reimbursement methodology rules for each Medicaid and non-Medicaid program operated by DHS for which cost reports were required. One set of reimbursement methodology rules applies to cost reports prior to 1997, and the other set of rules applies to cost reports after 1997. This proposal repeals outdated (pre-1997) reimbursement methodology rules for the day activities and health services program.

The Texas Health and Human Services Commission (HHSC) is proposing related repeals of obsolete Medicaid reimbursement methodology rules for this program in its Chapter 355 in this issue of the *Texas Register*.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed repeals will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Hine also has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the sections will be to have obsolete rule language eliminated from the rule base. Eliminating these sections will lessen provider confusion as to which program-specific reimbursement methodology rules are in effect, since there no longer will be two sets of published reimbursement methodologies, each applicable to different cost-reporting periods. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeals, because the proposal deletes obsolete rule language and lessens provider confusion as to which program-specific reimbursement methodology rules are in effect. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in HHSC Rate Analysis for Long Term Care-Aged & Disabled. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-288, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§98.6901. Introduction.
§98.6902. Cost Reporting Procedures.
§98.6903. Reimbursement Determination.
§98.6904. Allowable Cost Information.
§98.6905. List of Allowable Costs.
§98.6906. Unallowable Costs.

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 September 6, 2002.

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TRD-200205847
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 20, 2002
For further information, please call: (512) 438-3734

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.3

The Texas Funeral Service Commission has withdrawn from consideration the proposed new §201.3 which appeared in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5056).

Filed with the Office of the Secretary of State on August 30, 2002.

TRD-200205761
Cue Boykin
Assistant Attorney General
Texas Funeral Service Commission
Effective date: August 30, 2002
For further information, please call: (512) 475-4219

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.28

The Texas Funeral Service Commission has withdrawn from consideration the proposed amendment to §203.28 which appeared in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5056).

Filed with the Office of the Secretary of State on August 30, 2002.

TRD-200205762
Cue Boykin
Assistant Attorney General
Texas Funeral Service Commission
Effective date: August 30, 2002
For further information, please call: (512) 475-4219

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 181. GENERAL RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §181.28

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission for the Deaf and Hard of Hearing has been automatically withdrawn. The amended section as proposed appeared in the March 8, 2002 issue of the *Texas Register* (27 TexReg 1687).

Filed with the Office of the Secretary of State on September 10, 2002.

TRD-200205916

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.16

The Texas Funeral Service Commission (Commission) adopts an amendment to §201.16 Memorandum of Understanding between the Commission and the Texas Department of Health without changes to the proposed text published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5315).

This amendment is adopted to set forth the full language of the Memorandum of Understanding, and make other non-substantive changes.

The Commission received no comments regarding the amendment.

This amendment is adopted under §651.152 of the Texas Occupations Code. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651. The amendment is also adopted under Texas Occupations Code, §651.160. The Commission interprets this section to require it to adopt a Joint Memorandum of Understanding (JMOU) with the Department of Health regarding Chapters 193 and 361, Texas Health and Safety Code. The JMOU is to outline the responsibilities of each agency, establish procedures for referral to and notification of each agency of violations by funeral establishments, and coordinate inspection and enforcement efforts of both agencies for measures funeral establishments are required to implement under Chapters 193 and 361.

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

Filed with the Office of the Secretary of State on August 30, 2002.

TRD-200205764
Cue Boykin
Assistant Attorney General
Texas Funeral Service Commission
Effective date: September 19, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 475-4219

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.24

The Texas Funeral Service Commission (Commission) adopts amendments to §203.24, relating to Unprofessional Conduct. The amendments are adopted with changes to the proposed text as published in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5057).

The amendments are adopted include conduct the Commission deems to be unprofessional and to prohibit conduct jeopardizing the integrity of the investigative and formal hearings processes.

The Commission received comments on §203.24 from the Texas Funeral Directors Association. The commenter stated that the proposed amendments constitute additional burdens on licensees in excess of or inconsistent with those authorized by Chapter 651 of the Texas Occupations Code, and that the Commission lacks statutory authority to promulgate the amendments as proposed. Particularly, the commenter contends that Chapter 651, Subchapter J, "unequivocally and completely" sets forth the prohibited practices in which a funeral director or embalmer may not engage. The commenter reasons that because Subchapter J's listing of prohibited practices is unequivocal and complete, the Commission is powerless to define by rule additional acts of conduct the Commission deems unprofessional or unethical. The commenter observes also that the conduct prohibited by (b)(10)-(12) is "currently covered by the State's civil and criminal laws."

The Commission disagrees with the commenter. The Commission recognizes that the Penal Code criminalizes certain acts of coercive conduct relating to witnesses and jurors. The Commission lacks authority to directly enforce the State's criminal laws, however. Further, the Commission doubts that a local prosecutor would prosecute a Commission licensee who harasses a witness or a complainant at a hearing before the State Office of Administrative Hearings because local prosecutors have higher-profile cases such as homicides to occupy their time.

The Commission believes that proposed (b)(11)-(12) fall within the Commission's express authority to "adopt rules...necessary to administer this chapter" under Chapter 651, Subchapter D, §651.152. The Commission submits that prohibiting the conduct described in proposed (b)(11) and (12) is fundamental in preserving the integrity of the investigative and hearings processes. Further, and for the same reason, the Commission contends that if the Commission's authority is not expressly found in §651.152, then its authority to adopt these subsections is necessarily implied from its express authority. Finally, the Commission is given express statutory authority to prescribe professionalism

standards by Chapter 651, Subchapter D, §651.151(a) among its "GENERAL POWERS AND DUTIES."

Next, the commenter describes Chapter 651, Subchapter E as detailing "the proceedings for complaints and investigations." The commenter contends that Subchapter E is all encompassing; therefore the Commission lacks the authority to adopt subsection (b)(10) prohibiting certain communications between a licensee and a member of the Board of Commissioners.

The Commission disagrees but nevertheless has limited subsection (b)(10)'s application to communications described in the Administrative Procedure Act, Government Code, §2001.061 relating to communications between decision makers in contested case proceedings and a person, party, or their representative, except upon notice and an opportunity for each party to participate. The prevention of ex parte communication is fundamental to preserving the integrity of the formal hearings process. Accordingly, the Commission asserts that (b)(10) falls within the Commission's express authority to "adopt rules...necessary to administer this chapter" under Chapter 651, Subchapter D, §651.152, but if not, then its authority to adopt this subsection is necessarily implied from its express authority.

Finally, the commenter states that the proposed language in (b)(13) "exhibiting disrespect for dead human bodies" is not defined in Chapter 651; thus the Commission has no statutory authority to promulgate this proposed amendment. The Commission disagrees with the commenter's assertion regarding the Commission's authority to adopt the subsection, but nevertheless has omitted the objected-to phrase from (b)(13) as adopted because the phrase's usage is unnecessary to prohibit the specific conduct described in (b)(13).

The amendments are adopted under §651.151 and §651.152. The Commission interprets §651.151 as authorizing it to establish professionalism standards by rule. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

§203.24. Unprofessional Conduct.

(a) The commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the commission, and may probate any license suspension if the commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Texas Occupations Code, Chapter 651, the adopted rules of the Texas Funeral Service Commission and applicable health and vital statistics laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to file with the commission any documentation as and when requested during the course of a commission or staff investigation.

(3) operating a funeral establishment in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a commission employee in the lawful performance of such employee's duties of enforcing Texas Occupations Code, Chapter 651 and commission rules or instructions;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the commission;

(7) physically abusing or threatening to physically abuse a commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact.

(10) communicating directly or indirectly with a member of the Board of Commissioners during the pendency of a contested case proceeding in connection with an issue of fact or law, except upon notice and opportunity for each party to participate.

(11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;

(12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;

(13) violating any Texas law governing the transportation, storage, refrigeration, interment, or disinterment of the dead.

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

Filed with the Office of the Secretary of State on August 30, 2002.

TRD-200205765
Cue Boykin
Assistant Attorney General
Texas Funeral Service Commission
Effective date: September 19, 2002
Proposal publication date: June 14, 2002
For further information, please call: (512) 475-4219

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22 TAC §203.27

The Texas Funeral Service Commission (Commission) adopts amendments to §203.27 relating to Sponsors of Provisional Licensees without changes as published in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5057).

The amendments are adopted to establish the requirement that a licensed embalmer or funeral director be physically present in the room with the provisional licensee and in view of work performed

during the course of the work performed by the provisional licensee and to clarify additional duties of sponsors of provisional licensees.

The Commission received comments from the Texas Funeral Directors Association. The commenter states that its members find the administrative responsibilities presently required to be full time and all consuming, in addition to providing the services funeral directors are licensed to provide. The commenter also asserts that increasing the reporting date from 15 days as proposed to 30 days would not increase the risk to public health. Accordingly, the commenter suggests that the language in subsection (g) requiring a sponsor to notify the Commission of a provisional licensee's departure from an establishment within 15 days be extended to 30 days.

The Commission disagrees. The amount of time required to be expended in notifying the Commission of a provisional licensee's departure will be the same whether the reporting deadline is 15 days or 30 days. Further, earlier notification will allow the Commission's staff to more efficiently track the whereabouts and activities of provisional licensees.

The amendment is adopted by the Commission which interprets Occupations Code §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

Filed with the Office of the Secretary of State on August 30, 2002.

TRD-200205766
Cue Boykin
Assistant Attorney General
Texas Funeral Service Commission
Effective date: September 19, 2002
Proposal publication date: June 14, 2002
For further information, please call: (512) 475-4219

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §§271.1, 271.2, 271.6

The Texas Optometry Board adopts amendments to §§271.1, 271.2, and 271.6, without change to the proposed text as published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5352).

The amendments revise citations to the Optometry Act. The new citations will be to the Texas Occupations Code. The amendments to §271.6 also incorporate the amendment to the Optometry Act that permits fourth year students in good standing and in the last semester of optometry school to take the state jurisprudence examination.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.254. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and §351.254 as authorizing certain applicants not yet graduated to take the examination.

No other sections are affected by the amendments.

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 September 6, 2002.

TRD-200205855
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 26, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 305-8500

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.63

The Texas Department of Health (department) adopts an amendment to §97.63 concerning immunization requirements for Texas child-care facilities, elementary and secondary schools and institutions of higher education. This section is adopted with changes to the proposed text as published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4307).

Specifically, this amendment allows for vaccine doses administered up to four days before the minimum interval or age be counted as valid. The proposed revision to existing requirements will incorporate recent general recommendations adopted by the Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age. CDC believes that administering a dose a few days earlier than the minimum interval or age is unlikely to have a significant negative effect on the immune response to that dose.

Concerning §97.63, a legislative representative requested clarification in the rule language regarding adoption of the ACIP general recommendations by the CDC.

The department agrees and has amended §97.63 by adding new language "adopted by the Centers for Disease Control and Prevention (CDC)" throughout the rule.

Concerning §97.63, a legislative representative requested additional language regarding adoption of the General Recommendations on Immunizations in reference to the timing of vaccines around the first birthday.

The department agrees and has amended §97.63 by adding new language "regarding the validity of vaccine doses administered less than or equal to 4 days before the minimum interval or age" was added throughout the rule.

The department staff made comments and changes were made:

Concerning §97.63(c)(1)(E)(iii), the department added the following language, "Copies of General Recommendations on Immunizations may be obtained from Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284."

This rule is adopted under Health and Safety Code §81.023, which requires the Board of Health (board) to develop immunization requirements for children; Education Code §38.001, which allows the board to develop immunization requirements for admission to any elementary or secondary school; Education Code §51.933, which allows the board to develop immunization requirements for students at any institution of higher education who are pursuing a course of study in a health profession; Human Resources Code, §42.043, which requires the department to make rules regarding the immunization of children admitted to child-care facilities; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§97.63. Required Immunizations.

(a) For further information see §97.71 of this title (relating to Provisional Enrollment) and §97.77 of this title (relating to Remarks and Special Recommendations).

(b) Doses of oral poliovirus vaccine (OPV) and inactivated poliovirus vaccine (IPV) may be used interchangeably and count equally toward meeting the polio vaccine requirements in all of the following age ranges. A child or student age five and older will be in full compliance with the polio vaccine requirement whenever he or she has received at least three OPV doses or at least three IPV doses, or any combination of at least three doses of OPV and IPV, with one dose received since the fourth birthday.

(c) The following immunizations are required in the respective age groupings. A child or student must meet all the immunization requirements specific to an age group upon first entering the age group. Implementation of requirements for hepatitis B vaccine for adolescents and varicella vaccine and hepatitis A for all ages is contingent upon the appropriation of funds to the department for these purposes. By July 1 of each odd-numbered year, the department will publish a statement on whether or not these vaccines have been funded and are required as specified.

(1) Children less than five years of age: polio vaccine; diphtheria-tetanus-pertussis (DTP) or diphtheria-tetanus-acellular pertussis (DTaP) vaccine; measles, mumps, and rubella vaccine (MMR); Haemophilus influenzae type b conjugate vaccine (HibCV), hepatitis A, and varicella vaccine.

(A) Children less than two months old: no immunizations are required.

(B) Children two months of age, but not yet four months of age: one dose each of polio vaccine, DTP/DTaP vaccine, and HibCV are required.

(C) Children four months of age, but not yet six months of age: two doses each of polio vaccine, DTP/DTaP vaccine, and HibCV are required.

(D) Children six months of age, but not yet 12 months of age: two doses of polio vaccine and HibCV, and three doses of DTP/DTaP vaccine are required.

(E) Children 12 months of age, but not yet 15 months of age (12 months through 14 months of age):

(i) three doses of polio vaccine are required;

(ii) three doses of DTP/DTaP vaccine are required. Any combination of three doses of DTP/DTaP will meet this requirement;

(iii) one dose of MMR vaccine is required. Only doses received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by the Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to 4 days before the minimum interval or age will meet this requirement. Serologic confirmation of measles, mumps, or rubella immunity or serologic evidence of infection is acceptable in lieu of vaccination for that disease only. Copies of General Recommendations on Immunizations may be obtained from Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284. For further information see §97.67 of this title (relating to Verification of Immunity to Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella); and

(iv) two doses of HibCV are required.

(v) no later then August 1, 2000, one dose of varicella vaccine is required. This vaccine must have been received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age. A parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title.

(F) Children 15 months of age, but not yet five years of age (15 months through four years of age):

(i) three doses of polio vaccine are required;

(ii) any combination of DTP/DTaP will meet the following requirement:

(iii) one dose of MMR vaccine is required. Only doses received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age will meet this requirement. Serologic confirmation of measles, mumps, or rubella immunity or serologic evidence of infection is acceptable in lieu of vaccination for that disease only. For further information see §97.67 of this title; and

(iv) one dose of HibCV on or after 15 months of age is required unless a schedule for a primary series and booster was completed prior to or at 15 months of age. A physician-validated history of invasive Haemophilus influenzae type b disease, on or after the second birthday will substitute for the vaccine requirement for children two years of age through four years of age.

(v) no later then August 1, 2000, one dose of varicella vaccine is required. This vaccine must have been received on or after the first birthday, or in accordance with the most recent General

Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age. A parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title; and

(vi) no later then August 1, 2000, children subject to these requirements as described in §97.61 (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. In addition to the above hepatitis A vaccine requirements, the Texas Department of Health (department) pursuant to the requirements of Health and Safety Code §81.023 shall require hepatitis A vaccine for children residing in other geographic areas specified by the department when the incidence rate of hepatitis A during a representative period of time of no less than 180 days has reached the rate at least twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Doses of hepatitis A vaccine are required as follows:

(I) children 2 years of age but not yet 3 years of age are required to show proof by 30 days past their second birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP)) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age of one dose of hepatitis A vaccine administered on or after their second birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age; and

(II) children 3 years of age but not yet 5 years of age are required to have received two doses of hepatitis A vaccine administered on or after their second birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age.

(2) Children and students five years of age or older.

(A) Polio. At least three doses of polio vaccine are required, provided at least one dose has been received on or after the fourth birthday. Children and students who have received two doses of inactivated poliovirus vaccine (IPV) followed by two doses of oral poliovirus vaccine (OPV) prior to their fourth birthday do not require one dose of polio vaccine on or after their fourth birthday. Polio vaccine is not required for persons 18 years of age or older. For further information see §97.65 of this title (relating to Pregnancy) and §97.77(c) and (d) of this title (relating to Remarks and Special Recommendations).

(B) Tetanus/Diphtheria.

(i) Children and students six years of age and younger: at least four doses of DTP/DTaP, DT, or Td vaccine are required, provided at least one dose has been received on or after the fourth birthday. Pertussis vaccine is not required for children/students who are five years of age and older. Children with a medical contraindication to pertussis vaccine will need to have had only three doses of any combination of DTP/DTaP/DT/Td vaccines if their first dose was given on or after the first birthday and their third dose was given on or after the fourth birthday. For further information see §97.77(c) and (d) of this title.

(ii) Children and students seven years of age and older: at least three doses of DTP or DTaP, DT, or Td vaccine are required, provided at least one dose has been received on or after the fourth birthday. Pertussis vaccine is not required for children/students who are five years of age and older. Any combination of three doses of DTP/DTaP/DT/Td will meet this requirement. One dose of DTP, DTaP, DT, or Td is required within the last ten years. For further information see §97.77(c) and (d) of this title.

(C) Measles.

(i) Beginning September 1, 1990:

(I) all children and students must have received measles vaccine on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, provide serologic confirmation of measles immunity or serologic evidence of infection; and

(II) the requirement for measles vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age will apply if a child's/student's immunization record is updated; a child/student enters a child-care facility or school for the first time; or a child/student transfers from another state into a Texas school or child-care facility.

(ii) Beginning January 1, 1991, children and students born on or after September 1, 1978 will be required to show serologic proof of measles immunity, serologic evidence of infection, or receipt of two doses of measles vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age. This proof is not required until the child's 12th birthday. The two doses of measles vaccine must have been administered at least 28 days apart. Children and students may have 30 days past their 12th birthday to be in compliance with this clause. For further information see §97.65 of this title and §97.67 of this title.

(iii) Effective August 1, 1997:

(I) children born on or after September 2, 1991, will be required to show proof of either:

(-a-) two doses of measles vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for

Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age and at least 28 days apart; or

(-b-) serologic confirmation of immunity to measles illness or serologic evidence of infection. For further information see §97.65 of this title and §97.67 of this title; and

(II) children born prior to September 2, 1991 will be required to show proof by 30 days past their 12th birthday of either:

(-a-) two doses of measles vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, and at least 28 days apart; or

(-b-) serologic confirmation of immunity to measles illness or serologic evidence of infection. For further information see §97.65 of this title and §97.67 of this title.

(D) Rubella. Beginning September 1, 1991:

(i) all children and students must have received rubella vaccine on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, provide serologic confirmation of rubella immunity, or serologic evidence of infection; and

(ii) the requirement for rubella vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age will apply if a child's/student's immunization record is updated; a child/student enters a child-care facility or school for the first time; or a child/student transfers from another state into a Texas school or child-care facility. For further information see §97.65 of this title and §97.67 of this title.

(E) Mumps. Beginning September 1, 1990:

(i) all children or students will be required to have received mumps vaccine administered on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, provide serologic confirmation of mumps immunity, or serologic evidence of infection; and

(ii) the requirement for mumps vaccine administered on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, will apply if a child's/student's immunization record is updated, a child/student enters a child-care facility or school for the first time; or a child/student transfers from another state into a Texas school or child-care facility. For further information see §97.65 of this title and §97.67 of this title.

(F) Hepatitis B.

(i) Effective August 1, 1998, children born on or after September 2, 1992, will be required to show proof of either:

(I) three doses of hepatitis B vaccine; or

(II) serologic confirmation of immunity to hepatitis B or serologic evidence of infection. For further information see §97.67 of this title.

(ii) No later then August 1, 2000, children born on or after September 2, 1988, but before September 2, 1992 will be required to show proof by 30 days past their 12th birthday of either:

(I) three doses of hepatitis B vaccine; or

(II) serologic confirmation of immunity to hepatitis B or serologic evidence of infection. For further information see §97.67 of this title.

(G) Varicella.

(i) No later then August 1, 2000, children born on or after September 2, 1994, will be required to show proof of either:

(I) one dose of varicella vaccine received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, (two doses are required if the child is 13 years old or older at the time the first dose of varicella vaccine is received); or

(II) a parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity. For further information, see §97.67 of this title.

(ii) No later than August 1, 2000, children born on or after September 2, 1988, but before September 2, 1994, will be required to show proof by 30 days past their 12th birthday of either:

(I) one dose of varicella vaccine received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age (two doses are required if the child is 13 years old or older at the time the first dose of varicella vaccine is received); or

(II) a parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity. For further information, see §97.67 of this title.

(H) Hepatitis A. Effective August 1, 1999, children subject to these requirements as described in §97.61 of this title (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. In addition to the above hepatitis A vaccine requirements, the department pursuant to the requirements of Health and Safety Code §81.023 shall require hepatitis A vaccine for children residing in other geographic areas specified by the department when the incidence rate of hepatitis

A during a representative period of time of no less than 180 days has reached the rate at least twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Children and students born on or after September 2, 1992, will be required to have received two doses of hepatitis A vaccine administered on or after their second birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age.

(3) Students in institutions of higher education (colleges, universities, and other teaching facilities above the high school level).

(A) Applicability. This paragraph applies to all students enrolled in health-related courses which will involve direct patient contact in medical or dental care facilities. This includes all medical interns; residents; fellows; and others who are being trained in medical schools, hospitals, and health science centers listed in the Texas Higher Education Coordinating Board's list of higher education in Texas; and students attending two-year and four-year colleges whose course work involves direct patient contact regardless of: number of courses taken; number of hours taken; and classification of student. Subparagraph (I) of this paragraph also applies to veterinary medical students whose course work involves direct contact with animals or animal remains regardless of number of courses taken; number of hours taken; and classification of student. The department will assist institutions of higher education to educate all students of the need for immunizations and will assist in the provision of vaccines as resources allow.

(B) Provisional enrollment. Students referenced in this paragraph may be provisionally enrolled for up to one semester or one quarter. The provisional enrollment will allow students to attend classes while obtaining the required immunizations and documentation (immunization records) of required immunizations. Student health care providers cannot be provisionally enrolled without receipt of at least one dose of MMR vaccine if direct patient contact will occur during the provisional enrollment period. For further information see §97.62 of this title (relating to Exclusions from Compliance); §97.65 of this title; §97.67 of this title; §97.73 of this title (relating to Acceptable Documents of Immunizations); and §97.77 of this title. Other sections of this chapter regarding immunizations also affect college/university students and institutions of higher education.

(C) Polio. Polio vaccine is not required for any student. All students enrolled in health-related courses are encouraged to ascertain that they are immune to poliomyelitis.

(D) Tetanus/Diphtheria. Beginning January 1, 1992, tetanus/diphtheria toxoid (Td) is required for all students defined previously in subparagraph (A) of this paragraph. Students enrolled in health-related courses must have received one dose of Td within the past ten years. For recordkeeping, only one date (month, day, year) for Td must be recorded, this dose is the Td dose administered within the past ten years.

(E) Measles. Beginning January 1, 1992:

(i) all students defined previously in subparagraph (A) of this paragraph who were born on or after January 1, 1957, must show proof of either:

(I) two doses of measles vaccine administered since January 1, 1968, and on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age and at least 28 days apart; or

(II) at least one dose of measles vaccine administered on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age, which must be received by students enrolled in health-related courses prior to direct patient contact and completion of the measles requirement must be accomplished as rapidly as is medically feasible; or

(III) serologic confirmation of measles immunity or serologic evidence of infection; and

(ii) for further information see §97.65 of this title and also §97.67 of this title.

(F) Rubella. Beginning January 1, 1992:

(i) all students defined previously in subparagraph (A) of this paragraph must show, prior to patient contact, proof of either:

(I) one dose of rubella vaccine administered on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP)) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age; or

(II) serologic confirmation of rubella immunity, or serologic evidence of infection; and

(ii) for further information see §97.65 of this title and also §97.67 of this title.

(G) Mumps, Beginning January 1, 1992:

(i) all students defined previously in subparagraph (A) of this paragraph who were born on or after January 1, 1957, must show, prior to patient contact, proof of either:

(I) one dose of mumps vaccine administered on or after their first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP)) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age; or

(II) serologic confirmation of mumps immunity or serologic evidence of infection; and

(ii) for further information see §97.65 of this title and also §97.67 of this title.

(H) Hepatitis B. Beginning January 1, 1992, all students defined previously in subparagraph (A) of this paragraph shall receive a complete series of hepatitis B vaccine prior to the start of direct patient care or show serologic confirmation of immunity to hepatitis B virus. For further information see §97.67 of this title.

(I) Rabies. Beginning January 1, 1992:

(i) all students enrolled in schools of veterinary medicine shall receive a complete primary series of rabies vaccine prior to the start of contact with animals or their remains; and

(ii) a booster dose of rabies vaccine is to be obtained by the student every two years unless protective serum antibody levels are documented.

(J) Varicella. Beginning August 1, 1999, varicella vaccine is required of all students defined previously in subparagraph (A) of this paragraph. One dose of vaccine is required for students who received this vaccine prior to 13 years of age; two doses are required for students who were not vaccinated before their thirteenth birthday. All doses of this vaccine must have been received on or after the first birthday, or in accordance with the most recent General Recommendations on Immunizations adopted by Centers for Disease Control and Prevention (CDC) issued by the Advisory Committee on Immunization Practices (ACIP) regarding the validity of vaccine doses administered less than or equal to four days before the minimum interval or age. A history of varicella illness (chickenpox) validated by the student, the student's parent or the student's physician or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title.

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 September 6, 2002.

TRD-200205870
Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: May 17, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER G. VACCINATION STAMPS

The Texas Department of Health (department) adopts amendments to §§97.151 - 97.153, 97.155, 97.156 and repeal of §97.154, concerning the criteria for issuing yellow fever immunization stamps to physicians. Section 97.156 is adopted with changes to the proposed text as published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4310). Sections 97.151 - 97.153, 97.155, and the repeal of §97.154 are adopted without changes and therefore will not be republished.

These are final rules concerning the criteria for issuing yellow fever immunization stamps to physicians. The Texas Department of Health (department) is the governmental entity which determines which physicians in the state are authorized to administer yellow fever vaccine and validate cholera vaccination for persons who travel outside the United States. A physician's application for and accessibility to yellow fever vaccination stamps will remain basically unchanged. However, the department has deleted all references to cholera vaccination and validation of cholera vaccination. The manufacture and sale of the only licensed cholera vaccine in the United States have been discontinued. The risk of cholera to United States' travelers is so low that vaccination is of questionable benefit according to the Centers for Disease Control and Prevention's Health Information for International Travel, 2001-2002.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§97.151 - 97.156 and has determined that reasons for adopting the sections continue to exist; however, revisions were necessary and the repeal of §97.154 and amendments to §§97.151 - 97.153, 97.155 - 97.156 delete all references to cholera vaccination and make the rules more accessible, understandable, and usable.

The department published a Notice of Intention to Review §§97.151 - 97.156 as required by Government Code, §2001.039 in the *Texas Register* on January 14, 2000 (25 TexReg 275). No comments were received as a result of this publication.

No comments were received concerning the proposal during the comment period. However, a comment was received from department staff to correct the reference to fair hearing rules.

Change: Concerning §97.156, the language was changed to reference the fair hearing rules, §§1.51 - 1.55 instead of the formal hearing rules, §§1.21, 1.23, 1.25, and 1.27.

25 TAC §§97.151 - 97.153, 97.155, 97.156

The amendments are adopted under the authority of Health and Safety Code, §81.021, which gives the board the right to exercise its powers in matters relating to protecting the public health to prevent the introduction of disease into the state; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§97.156. Denial, Suspension, or Revocation of Stamp.

(a) The division may deny an application for a stamp or suspend or revoke an existing stamp if the applicant or holder fails to comply with the requirements of these sections. The applicant or holder has the opportunity to request a hearing on any of these actions in accordance with department fair hearing rules, §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(b) The department will not suspend or revoke a stamp without a prior hearing, except if the division determines that immediate suspension or revocation is necessary because of imminent threat to public health; the division may suspend or revoke the stamp and offer the holder the opportunity for a post-action hearing.

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

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General Counsel
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25 TAC §97.154

The repeal is adopted under the authority of Health and Safety Code, §81.021, which gives the board the right to exercise its powers in matters relating to protecting the public health to prevent the introduction of disease into the state; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

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CHAPTER 127. REGISTRY FOR PROVIDERS OF HEALTH-RELATED SERVICES

25 TAC §§127.1 - 127.4

The Texas Department of Health (department) adopts amendments to §§127.1-127.4 concerning the registry for providers of health-related services without changes to the proposed text as published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2701), and therefore the sections will not be republished.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department reviewed Chapter 127 in its entirety and determined that reasons for adopting the sections continue to exist; however, amendments to the sections are necessary to improve draftsmanship and make the rules more accessible, understandable, and usable.

The department published a Notice of Intention to Review §§127.1 - 127.4 as required by Government Code §2001.039 in the *Texas Register* on February 8, 2002 (27 TexReg 989). No comments were received as a result of this publication.

Additionally, §127.2 is amended to require that at least 50 participants must remain on each occupation's registry to ensure that costs associated with the administration of each registry will be covered. Currently, one registry exists for medical laboratory practitioners and there are five participants on the registry. The 2001 fee study reflects that the program covers 22.7% of its costs.

A comment was received concerning the proposed sections. Following the comment is the department's response and any resulting change.

Comment: Concerning the sections in general, a commenter recommends that the medical laboratory practitioner registry be deleted because the registry was established in 1991 prior to the implementation of the federal Clinical Laboratory Improvement Amendments (CLIA) regulations, which contain specific education and training requirements for laboratory personnel.

Response: The department agrees. However, no change is made as a result of the comment because there are fewer than 50 participants on the medical laboratory practitioner registry and the effect of the amendments to §127.2 will be the removal of that specific registry.

The commenter was the Clinical Laboratory Management Association, North Texas Chapter. The commenter was generally in favor of the rules.

The amendments are adopted under the Health and Safety Code, §12.014, which provides the Board of Health (board) with the authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

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

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CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Texas Department of Health (department) adopts amendments to §§135.1-135.29, 135.41-135.42, and 135.51-135.54 concerning the regulation of ambulatory surgical centers (ASCs). Sections 135.1, 135.11, and 135.52 are adopted with changes to the proposed text as published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2702). Sections 135.2-135.10, 135.12-135.29, 135-41-135.42, 135.51, and 135.53-135.54 are adopted without changes and will not be republished.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 135.1-135.29, 135.41-135.42, and 135.51-135.54 have been reviewed and the department has determined that reasons for adopting the sections continue to exist, however, revisions to the sections are necessary.

The department published a Notice of Intention to Review for §§135.1-135.27, 135.41-135.42, and 135.51-135.54 in the *Texas Register* (25 TexReg 4359) on May 12, 2000. A Notice of Intent for §§135.28-135.29 was published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1189). There were no comments received by the department on the sections.

Specifically, the amendment to §135.1 updates the statutory reference to the Health and Safety Code, Chapter 243. The amendments to §135.2 adds definitions for advanced practice nurse,

dentist, disposal, electronic signature, and prescriber; deletes the definition of statute because it is duplicative of the definition of act; amends the definitions of act, certified registered nurse anesthetist, director, and health care practitioners to delete obsolete references and for clarification purposes; and renumbers definitions as necessary to accommodate the added and deleted definitions. The amendment to §135.3 is editorial. The amendments to §§135.4 and 135.5 delete ambiguous language and clarify the intent of the sections. The amendments to §135.6 require that all employee categories, not just allied health professionals, be included in the personnel policies and that job descriptions be developed for all. The amendments to §135.7 require health care practitioners to practice their professions in accordance with state law and conform to the standards and ethics of their professions; require patient care responsibilities be delineated in accordance with recognized standards of practice; add a new subsection (d) which requires qualified medical personnel to be available for emergency treatment whenever there is a patient in the ASC who has received services; and reletter the subsections to accommodate the new subsection. The amendments to §135.8 delete the mandate for, and leaves to the discretion of the ASC, the use of self-assessment methodologies to implement the quality assurance program; and require a record be maintained of all transfers. The amendments to §135.9 require compliance with current statute for the retention, retirement, and release of medical records; add advanced practice nurse wherever physician is mentioned concerning evidence of an order or evaluation of a patient which must be included in the ASC record; delete the subsection concerning the use of a physician's stamp; and reletter the remaining subsection. The amendments to §135.10: delete certain emergency equipment required to be maintained and readily accessible; and eliminate specific work areas and facilities from the section because specific spatial requirements are addressed in §135.51 and §135.52 relating to physical plant and construction requirements. The amendment to §135.12 requires compliance with the Texas State Board of Pharmacy rules. The amendments to §135.13 add advanced practice nurse to the professionals who may order other laboratory work; require an authorized rather than a written signature by the pathologist interpreting tissue or positive cytology reports; and deletes a provision that prevents the use of a computerized signature or signature stamp; other changes to the section are editorial. The amendments to §135.14 add dentist, advanced practice nurse or other authorized healthcare practitioner as professionals who may order radiology services; and add a requirement that policies and procedures for laser technology be established and implemented. The amendments to §135.15 are editorial. The amendments to §135.16 include provisions that each required policy be developed, implemented, and enforced. The amendment to §135.17 requires that research activities be monitored by the governing body. The amendment to §135.18 is editorial. The amendment to §135.19 is due to a change in the name of a section. The amendments to §135.20 require that advanced practice nurses be included in the number of staff an ASC applicant reports to the director, and add a requirement that an ASC also report the number of surgical suites. The amendments to §135.21 add change in location as a reason the department may conduct an inspection; and add a reference to the act under which the department may propose to deny, suspend, or revoke an existing license. The amendments to §135.22 delete the requirement for a self-survey; and provides the ASC an opportunity to refute a cease to perform notification by submitting evidence of a timely renewal. The amendments to §135.23 reduce the number of days an ASC is required to notify the department of a change of ownership; and require that an ASC submit an application and fee at least 60 days prior to a relocation. The amendments to §135.24 rename the section, and update references. The amendment to §135.25 is editorial and mirrors the statutory language in Health and Safety Code, §243.0115. The amendment to §135.26 removes the number of days by which the department is required to furnish written notice of a violation following a survey. The amendment to §135.27 requires the ASC to furnish copies of all records pertinent to the investigation at the department's request. The amendments to §135.28 are editorial and clarify the conditions for reporting emergency transfers to a hospital. The amendment to §135.29 updates a statutory reference.

The amendments to §§135.41 and 135.42 relating to safety requirements provide current references to national codes, and update or delete obsolete language.

The amendments to §§135.51 - 135.54 relating to physical plant and construction requirements for new and existing ambulatory surgical centers generally clarify the rule; provide current references to national codes, and update and delete obsolete language.

The amendments to Table 4. Flame Spread and Smoke Production Limitations for Interior Finishes, §135.54(d)(4) include changing a section reference and the title of §135.52 was changed to reflect correct section title.

Due to staff comments, minor editorial changes were made for clarity and to improve the accuracy of the sections.

One comment was received during the 30-day comment period. The commenter was a society who was opposed to certain amendments to §135.11 relating to Anesthesia and Surgical Services in a Licensed ASC. Following the comment is the department's response and resulting changes.

Comment: Concerning §135.11(a), (f), (g), and (p), the commenter objected to the term "Anesthesia Practitioner" by pointing out the term was not defined in the rules or the statute. Concerning §135.11(b), the commenter objected to the use of the term "Qualified Practitioner" as there was no definition of such in the rules or the statute and thus felt the rule was ambiguous and vague.

Response: The department agrees with the commenter and has deleted references to "Anesthesia Practitioner" from §135.11(a), (f), (g), and (p). The department agrees with the commenter's objection concerning §135.11(b) regarding the use of the term "Qualified Practitioner" and has removed that term from the subsections. Subsection §135.11(c) is reworded for clarification of anesthesia services.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.1 - 135.29

The amendments are adopted under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act; which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs, and HSC §12.001, which provides the board with the

authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health. Government Code §2001.039 is implemented by the adoption.

§135.1. Purpose and Scope.

(a) The purpose of these sections is to implement Health and Safety Code, Chapter 243 which requires ambulatory surgical centers to be licensed by the Texas Department of Health.

(b) These sections provide minimum standards for ambulatory surgical center licenses and procedures for granting, denying, suspending, and revoking a license and licensure fees. The sections under this heading primarily cover the licensing procedures and standards for operation, and the remaining sections of this chapter primarily cover the requirements concerning construction design and the life safety code.

(c) The standards pertaining to the construction and design, the qualifications of the professional staff and other personnel, the equipment essential to the health and welfare of the patients, sanitary and hygienic conditions, and the quality assurance program may not exceed the minimum standards for certification under the Social Security Act, Title XVIII, 42 United States Code (U.S.C.) §1395 et seq. Should the state standards exceed the federal requirements in these areas, the federal requirements will control.

§135.11. Anesthesia and Surgical Services in a Licensed ASC.

(a) Anesthesia services provided in the ASC shall be limited to those techniques that are approved by the governing body.

(b) Anesthesia services shall be under the direction of a physician approved by the governing body upon the recommendation of the ASC medical staff.

(c) Anesthesia must be administered only by:

(1) an anesthesiologist;

(2) a qualified physician (other than an anesthesiologist);

(3) a dentist anesthetist;

(4) a certified registered nurse anesthetist who is under the supervision, as defined by the Medical Practice Act, Texas Occupations Code, §157.058, and the Nurse Practice Act, Texas Occupations Code, §301.152, of the operating physician or of an anesthesiologist who is immediately available if needed; or

(5) supervised trainees in an approved educational program.

(d) A person qualified to provide anesthesia services shall be available as long as clinically indicated.

(e) Policies and procedures shall be developed for anesthesia services.

(f) Anesthesia shall not be administered unless the operating surgeon or anesthesiologist has evaluated the patient immediately prior to surgery to assess the risk of the anesthesia relative to the surgical procedure to be performed.

(g) Patients who have received anesthesia shall be evaluated by the operating surgeon or by the person administering the anesthesia immediately prior to discharge in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for post operative monitoring of anesthesia.

(h) Surgical procedures performed in the ASC shall be limited to those procedures that are approved by the governing body upon the recommendation of qualified medical personnel.

(i) Adequate supervision of surgery conducted in the ASC shall be a responsibility of the governing body, shall be recommended by qualified medical personnel, and shall be provided by appropriate personnel.

(j) Surgical procedures shall be performed only by health care practitioners who are licensed to perform such procedures within Texas and who have been granted privileges to perform those procedures by the governing body of the ASC, upon the recommendation of qualified medical personnel and after medical review of the practitioner's documented education, training, experience, and current competence.

(k) Surgical procedures to be performed in the ASC shall be reviewed periodically as part of the peer review portion of the ASC's quality assurance program.

(l) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgery.

(m) The necessity or appropriateness of the proposed surgery, as well as any available alternative treatment techniques, shall be discussed with the patient prior to scheduling for surgery.

(n) Nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(o) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area.

(1) If flammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56A, Standard for the Use of Inhalation Anesthetics, Flammable and Nonflammable, 1978) and with applicable state and local fire codes.

(2) If nonflammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56G, Standard for Inhalation Anesthetics in Ambulatory Care Facilities, 1980) and with applicable state and local fire codes.

(p) An anesthesiologist or physician qualified in advanced life support and resuscitative techniques shall be present or immediately available until all patients operated on that day have been discharged.

(q) With the exception of those tissues exempted by the governing body after medical review, tissues removed during surgery shall be examined by a pathologist, whose signed report of the examination shall be made a part of the patient's medical record.

(r) The findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the health care practitioner who performed the operation. This description shall be immediately available to the health care practitioners providing patient care and becomes a part of the patient's medical record. Refer to §135.9(p) of this title (relating to Medical Records in a Licensed ASC).

(s) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be assured through the provision of adequate space, equipment, and personnel.

(1) Provisions shall be made for the isolation or immediate transfer of patients with communicable diseases.

(2) All persons entering operating rooms shall be properly attired.

(3) Acceptable asepetic techniques shall be used by all persons in the surgical area.

(4) Only authorized persons shall be allowed in the surgical area.

(5) Suitable equipment for rapid and routine sterilization shall be available to assure that operating room materials are sterile.

(6) Sterilized materials shall be packaged and labeled in a consistent manner to maintain sterility and identify sterility dates.

(7) Environmental controls shall be implemented to assure a safe and sanitary environment.

(8) Suitable equipment shall be provided for the regular cleaning of all interior surfaces.

(9) Operating rooms shall be appropriately cleaned before each operation.

(10) Contents of an intravenous (IV) admixture container delivered via IV tubing, injectable medications drawn into syringes or administered from pre-filled syringes are used for only one patient; except in special instances approved by the governing body.

(t) Procedures shall be developed for obtaining blood or blood products on a timely basis, unless it is against ASC policy not to obtain blood.

(u) Emergency power adequate for the type of surgery performed shall be available in operative and recovery areas.

(v) Periodic calibration and/or preventive maintenance of equipment shall be provided.

(w) The informed consent of the patient or, if applicable, of the patient's representative, shall be obtained before an operation is performed.

(x) A procedure shall be established for observation and care of the patient during the preoperative preparation and postoperative recovery period.

(y) Protocols shall be established for instructing patients in self-care after surgery, including written instructions to be given to patients who receive conscious sedation, regional and general anesthesia.

(z) Patients who have received anesthesia shall be dismissed in the company of a responsible adult unless a physician or advanced practice nurse writes an order that the patient may be dismissed without the company of a responsible adult.

(aa) An effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC shall be developed. The ASC must have a written transfer agreement with a hospital or all physicians performing surgery at the ASC must have admitting privileges at a local hospital.

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

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General Counsel
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SUBCHAPTER B. SAFETY REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.41, §135.42

The amendments are adopted under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act; which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs, and HSC §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health. Government Code §2001.039 is implemented by the adoption.

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

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SUBCHAPTER C. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS FOR NEW AND EXISTING AMBULATORY CENTERS

25 TAC §§135.51 - 135.54

The amendments are adopted under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act; which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs, and HSC §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health. Government Code §2001.039 is implemented by the adoption.

§135.52. Construction Requirements for New Ambulatory Surgical Centers.

(a) Ambulatory surgical center (ASC) location. An ASC may be a distinct separate part of an existing hospital, it may occupy an entire separate independent structure, or it may be located within another building such as an office building or commercial building.

(1) Accessibility. The location of a proposed new ASC shall be easily accessible for service vehicles and fire protection apparatus.

(2) Means of egress. An ASC shall have at least two exits remotely located in accordance with National Fire Protection Association (NFPA) 101, Life Safety Code, 1997 edition (NFPA 101), §12-6.2.4.1. When a required means of egress from the ASC is through another portion of the building, that means of egress shall comply with the requirements of NFPA 101 which are applicable to the occupancy of that other building. Such means of egress shall be open, available, unlocked, unrestricted, and lighted at all times during the ASC hours of operation. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(3) Hazardous location.

(A) Underground and above ground hazards. A new ASC or an addition(s) to an existing ASC may not be constructed near a hazardous location. Hazardous locations include underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high pressure lines, or under high voltage electrical lines.

(B) Fire hazards. A new ASC may not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing areas.

(C) Health and safety hazards. A new ASC may not be located in a building(s) which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health or safety of the patients.

(4) Undesirable locations.

(A) Nuisance producing sites. A new ASC may not be located near nuisance producing sites such as industrial sites, feed lots, sanitary landfills, or manufacturing plants which produce excessive noise or air pollution.

(B) Flood plains. Construction of new ASCs shall be avoided in designated flood plains. Where such is unavoidable, access and required ASC components shall be constructed above the designated flood plain. This requirement also applies to new additions to existing ASCs or portions of facilities which have been licensed previously as ASCs, but which have been vacated or used for other purposes. This requirement does not apply to remodeling of existing licensed ASCs.

(b) ASC site. The ASC site shall include paved roads, walkways, and parking in accordance with the requirements set out in this subsection.

(1) Paved roads and walkways.

(A) Paved roads shall be provided within lot lines for access from public roads to the main entrance and to service entrances.

(B) Finished surface walkways shall be provided for pedestrians. When public transportation or walkways serve the site, finished surface walkways or paved roads shall extend from the public conveyance to the building entrance.

(2) Parking.

(A) Off street parking shall be provided at the minimum ratio of two spaces for each operating room, one space for each staff member and one visitor's space for each operating room.

(B) Handicapped parking. Parking spaces for handicapped persons shall be provided in accordance with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(c) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and local governing building codes. Where there is no local governing building code, one of the following codes shall govern: Uniform Building Code, 1997 edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(1) General architectural requirements. All new construction, including conversion of an existing building to an ASC or establishing a separately licensed ASC within another existing building, shall comply with NFPA 101, §12-6, "New Ambulatory Health Care Facilities," and this section.

(A) Construction types for multiple building occupancy.

(i) When an ASC is part of a larger building which complies with NFPA 101, §12-6.1.6, "Minimum Construction Requirements" for (fire resistance) construction type, the designated ASC shall be separated from the remainder of the building with a minimum of 1-hour fire rated construction.

(ii) Multistory buildings. When an ASC is located in a multistory building of two or more stories, the entire building shall meet the construction requirements of NFPA 101, §12-6.1.6.3. An ASC may not be located in a multistory building which does not comply with the minimum construction requirements of NFPA 101, §12-6.1.6.3.

(iii) Single story buildings. When an ASC is part of a one-story building that does not comply with the construction requirements of NFPA 101, §12-6.1.6.2, the ASC must be separated from the remainder of the building with a 2-hour fire rated construction. The designated ASC portion shall have the construction type upgraded to comply with NFPA 101, §12-6.1.6.2.

(B) Special design provisions. Special provisions shall be made in the design of a facility if located in a region where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(2) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with nationally recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications.

(3) Physical environment. A physical environment that protects the health and safety of patients, personnel, and the public shall be provided in each facility. The physical premises of the facility and those areas of the facility's physical structure that are used by the patients (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and the requirements of this chapter.

(4) State handicapped requirements. Special considerations benefiting handicapped staff, visitors, and patients shall be provided. Each ASC shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(5) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements exists.

(6) Exceeding minimum requirements. Nothing in these sections shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in these sections.

(7) Equivalency. Nothing in these sections is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by these sections, provided technical documentation which demonstrates equivalency is submitted to the department for approval.

(8) Separate freestanding buildings (not for patient use). Separate freestanding buildings for nonpatient use which are located at least 20 feet from the ASC building such as the heating plant, boiler plant, repair workshops, or general storage may be designed and constructed in accordance with other applicable occupancy classification requirements listed in NFPA 101.

(d) Spatial requirements.

(1) Administration and public areas.

(A) Entrance. Entrances shall be located at grade level, be accessible to individuals with disabilities, and protected against inclement weather from the point of passenger loading/unloading to the building entrance. When an ASC is located on a floor above grade level, elevators shall be accessible and shall meet the requirements of subsection (g) of this section.

(B) Waiting area. A waiting area or lobby shall be provided which includes having access to the following rooms and items:

(i) public toilet facilities;

(ii) telephone(s) for public use; and

(iii) access to potable drinking water.

(C) Reception area. A designated reception area with desk or counter shall be provided.

(D) Interview space(s). Space shall be provided for private interviews relating to social services, credit, or admission.

(E) General or individual office(s). An office(s) shall be provided for business transactions, records, and administrative and professional staff.

(F) Medical records area. Medical record storage space shall be located within a secure designated area under direct visual supervision of administrative staff.

(G) General storage room.

(i) A minimum of 50 square feet per operating room shall be provided exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms, and surgical equipment storage. General storage may be located in one or more rooms or closets and shall be located outside of the patient treatment areas.

(ii) General storage room(s) shall be separated from adjacent areas by fire-rated construction in accordance with the NFPA 101, §§26-3.2.1 and 26-3.2.2.

(H) Wheelchair storage space or alcove. Storage space for wheelchairs shall be provided and shall be out of the direct line of traffic.

(2) Engineering services and equipment areas. Equipment rooms with adequate space shall be provided for mechanical and electrical equipment. These areas shall be separate from public, patient, and staff areas.

(3) Janitor's closet. In addition to the janitor's closet exclusive to the surgery suite, a sufficient number of janitor's closets shall be provided throughout the facility to maintain a clean and sanitary environment. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment

(4) Laboratory.

(A) General. Laboratory services shall be provided within the ASC or through a contract or other arrangement with a hospital or accredited laboratory.

(B) Special requirements. When the laboratory is located on-site the following minimum items shall be provided:

(i) a room with work counter, utility sink, and storage cabinets or closet(s); and

(ii) specimen collection facilities. For dip stick urinalysis, urine collection rooms shall be equipped with a water closet and lavatory. Blood collection facilities shall have space for a chair, work counter and hand washing facilities.

(C) Code compliance. An on-site laboratory shall comply with the following codes.

(i) Construction for fire protection in laboratories employing quantities of flammable, combustible, or other hazardous material shall be in accordance with the National Fire Protection Association 99, Health Care Facilities, 1996 edition, (NFPA 99).

(ii) Laboratories shall comply with the requirements of NFPA 99, "Health Care Facilities," 1996 edition, Chapter 10, as applicable and the requirements of NFPA 45, "Standards on Fire Protection for Laboratories Using Chemicals," 1996 edition, as applicable.

(5) Laundry and linen processing area(s). Laundry and linen processing may be done within the center or off-site at a commercial laundry.

(A) On-site linen processing. When on-site linen processing is provided, soiled and clean processing operations shall be separated and arranged to provide a one-way traffic pattern from soiled to clean areas. The following rooms and items shall be provided:

(i) a soiled linen processing room which includes areas for receiving, holding, sorting, and washing;

(ii) a clean linen processing room which includes areas for drying, sorting, folding, and holding prior to distribution;

(iii) supply storage cabinets in the soiled and clean linen processing rooms;

(iv) hand washing facilities within the soiled linen processing room; and

(v) a storage room for clean linen located within the surgical suite. Clean linen storage may be combined with the clean work room.

(B) Off-site linen processing. When linen is processed off-site, the following rooms or items shall be provided:

(i) a storage room for clean linen located within the surgical suite. Clean linen storage may be combined with the clean work room; and

(ii) a soiled linen holding room or area located within the surgical suite. Soiled linen holding may be combined with the soiled workroom.

(6) Pharmacy. A pharmacy work room or alcove shall be provided and located separate from patient and public areas and under the direct supervision of staff. A work counter, refrigerator, medication storage and locked storage for biologicals and drugs shall be provided. Hand washing facilities shall be located in or convenient to the pharmacy room or alcove.

(7) Preoperative patient holding room.

(A) General. A preoperative holding area shall be provided and arranged in a one-way traffic pattern so that patients entering from outside the surgical suite can change, gown, and move directly into the restricted corridor of the surgical suite. The holding area shall be separate from recovery and the restricted corridor.

(B) Patient station. A minimum of one patient station per operating room shall be provided.

(i) A minimum area of 60 square feet shall be provided for each patient station.

(ii) When a gurney or bed is used, the minimum clearance from the gurney or bed to a sidewall may not be less than three feet. A space of four feet shall be provided at the foot of the gurney or bed and the minimum clearance between gurneys or beds may not be less than four feet six inches.

(iii) Space shall be made available for storing and securing patient's personal effects.

(C) Patient toilet. A toilet room with handicapped accessible water closet and hand washing facilities shall be provided. The toilet room may be shared with the recovery room, if conveniently located to both.

(D) Special requirements. Hand washing facilities and a counter or shelf space for writing shall be provided for staff use within or convenient to the preop area. Staff hand washing facilities shall be separate from and in addition to patient toilet accommodations.

(8) Radiology.

(A) Special requirements. When radiology services are provided on-site, the following minimum facilities shall be provided:

(i) film processing facilities, if used;

(ii) viewing capabilities;

(iii) storage facilities for exposed film, if used, located in rooms or areas constructed in accordance with the NFPA 101, §26-3.2.1 and §26-3.2.2; and

(iv) dressing area(s) shall be required, depending on services provided, with convenient access to toilets and may be shared with patient changing/preop rooms.

(B) Fluoroscopy room. When fluoroscopy services are provided on site in a dedicated fluoroscopy room, a toilet room with handicapped accessible water closet and hand washing facilities shall be directly accessible to the room.

(9) Recovery room.

(A) General. A recovery room shall be distinct and separate from preoperative areas. The recovery room shall be arranged to provide a one way traffic pattern from the restricted surgical corridor to recovery and then to second stage recovery or discharge.

(B) Patient station(s). A minimum of one patient station per operating room, plus one additional station, shall be provided.

(i) When a gurney or bed is used, the minimum clearance from the gurney or bed to a sidewall may not be less than three feet. A space of not less than four feet shall be provided at the foot of each gurney or bed.

(ii) The minimum clearance between gurneys and beds may not be less than four feet six inches.

(C) Patient toilet. A toilet room with handicapped accessible water closet and hand washing facilities shall be provided. The toilet room may be shared with the preoperative patient holding area, if conveniently located to both.

(D) Second stage recovery. A separate supervised room or area may be provided for patients who are able to leave the recovery/post-anesthesia room, but need additional time for all vital signs to be stabilized to the point where the patient may leave the facility.

(i) When individual rooms are provided for second stage recovery, the rooms shall have an area of at least 60 square feet. When such rooms include a bed or recliner, a minimum clearance of three feet at the foot and on each side of the bed or recliner shall be provided.

(ii) When an open or ward area is provided for second stage recovery, the minimum clearance from the bed or recliner to the side wall may not be less than three feet; and a space of four feet shall be provided at the foot of each bed or recliner. The minimum clearance between beds or recliners may not be less than three feet.

(10) Staff clothing change area.

(A) General. The change area shall be designed to provide a one-way traffic pattern so that personnel entering from outside the surgical suite can change into scrub attire and move directly into the restricted corridor of the surgical suite.

(B) Staff changing area. A staff changing area shall include the following rooms and accommodations:

(i) dressing room with lockers;

(ii) toilet room(s) with water closet and hand washing facilities (may be shared if accessible to both male and female dressing rooms); and

(iii) a shower located somewhere within the facility.

(C) Surgical lounge. When provided, a lounge for surgical staff shall be located to permit use without leaving the surgical suite. These facilities may be integrated with the staff changing areas.

(11) Soiled workroom. In addition to the soiled workroom provided in the surgical suite, a separate soiled workroom(s) shall be

required when a treatment room is provided, except as allowed in subparagraph (B) of this paragraph.

(A) Special requirements. The workroom(s) shall contain a clinical sink or equivalent flushing type fixture, work counter, designated space for waste and linen receptacles, and hand washing facilities.

(B) Shared functions. The soiled workroom required in support of a treatment room may be combined with a surgical suite soiled work room with two means of entry. A separate door into the soiled workroom shall serve a treatment room located outside the surgical suite.

(12) Sterilizing facilities. A system for sterilizing equipment and supplies shall be provided. Sterilizing procedures may be done on-site or off-site, or disposables may be used to satisfy functional needs.

(A) Off-site sterilizing. When sterilizing is provided off-site and disposables and prepackage surgical supplies are used, the following rooms shall be provided near the operating room.

(i) Soiled holding room. A room for receiving contaminated/soiled material and equipment from the operating room shall be provided. The room shall be physically separate from all other areas of the suite. The room shall include a work counter(s) or a table(s), clinical sink or equivalent flushing type fixture, equipment for initial disinfection and preparation for transport to off-site sterilizing, and hand washing facilities. The soiled holding room may be combined with the surgical suite soiled workroom.

(ii) Clean workroom. A clean workroom shall be provided for the exclusive use of the surgical suite. The workroom shall contain a work counter, with space for receiving, disassembling and organizing clean supplies, storage cabinets or shelving, and hand washing facilities.

(iii) Sterilizer equipment. Sterilizer equipment shall be located in a separate room convenient to the operating room(s), in an alcove adjacent to the restricted corridor, or in the clean workroom.

(B) On-site sterilizing facilities. When sterilizing facilities are provided on-site they shall be located near the operating room and provide the following rooms.

(i) Receiving/decontamination room. The receiving/decontamination room shall be physically separate from all other areas of the surgical suite. The room shall include a work counter(s) or table(s), clinical sink or equivalent flushing type fixture, equipment for initial washing/disinfection, and hand washing facilities. Pass-through doors, windows, and washer/sterilizer decontaminators shall serve in delivering material to the clean workroom. The receiving/decontamination room may be combined with the surgical suite soiled workroom.

(ii) Clean/assembly workroom. The clean/assembly workroom shall include a counter(s) or table(s) with space for organizing, assembling, and packaging of medical/surgical supplies and equipment, equipment for terminal sterilizing, and hand washing facilities. Clean and soiled work areas shall be physically separated.

(iii) Sterile storage. A storage room for clean and sterile supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of manufacturers' clean/sterile medical/surgical supplies. This room may be combined with the clean assembly/workroom.

(iv) Cart storage room or alcove. The storage space for distribution carts shall be adjacent to clean and sterile storage area(s) and close to main distribution points.

(13) Surgical suite. The surgical suite shall be arranged to preclude unrelated traffic through the suite. The surgical suite shall contain at least one operating room and all surgical service areas required under subparagraph (B) of this paragraph.

(A) Operating room. The operating room(s) shall have a clear floor area of at least 240 square feet exclusive of fixed or moveable cabinets, counters, or shelves. The minimum clear dimension between built-in cabinets, counters, and shelves shall be 14 feet.

(B) Surgical service areas.

(i) Restricted corridor. The restricted corridor shall serve as the primary passageway for staff and patients within the surgical suite. The following rooms and areas when provided or required by NFPA 101 shall have direct access to the restricted corridor:

(I) preoperative patient holding area;

(II) operating room(s);

(III) recovery room;

(IV) soiled workroom;

(V) clean workroom;

(VI) janitor's closet;

(VII) equipment storage;

(VIII) sterilizing facilities;

(IX) anesthesia workroom;

(X) area for emergency crash cart; and

(XI) emergency eyewash.

(ii) Soiled workroom. A soiled workroom shall be provided for the exclusive use of the surgical suite staff. The workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, designated space for waste and linen receptacles, and hand washing facilities. The soiled workroom may not have direct connection with operating room(s) or other sterile activity room(s).

(iii) Clean linen storage. A storage room or alcove shall be provided for storing clean linen.

(iv) Scrub facilities. A scrub sink shall be provided near the entrance to each operating room. Scrub facilities shall be arranged to minimize incidental splatter on nearby personnel or carts. One scrub station with dual faucets and separate controls may serve two adjacent operating rooms.

(v) Janitor's closet. A janitor's closet shall be provided for the exclusive use of the surgical suite. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(vi) Equipment storage. A room, alcove, or designated area shall be provided for storing equipment and supplies used in the surgical suite. The storage room or area shall be a minimum of 50 square feet per operating room.

(vii) Medical gas storage room. When provided or required by NFPA 101, a medical gas storage room shall comply with the requirements of NFPA 99, Chapter 4-4 "Gas and Vacuum Systems".

(viii) Area for emergency crash cart. An area or alcove located out of traffic and convenient to the operating room(s) shall be provided for an emergency crash cart.

(ix) Stretcher storage area. An area or alcove shall be located convenient for use and out of the direct line of traffic for the storage of stretchers as required. Stored stretchers shall not encroach on corridor widths.

(14) Treatment room.

(A) A treatment room is not required, but when provided, it may be used for minor procedures that use only local anesthetics.

(B) The treatment room shall have a clear floor area of at least 100 square feet exclusive of fixed or moveable cabinets, counters, or shelves.

(C) The treatment room shall contain an examination table, a counter for writing, and hand washing facilities.

(15) Examination room. An examination room is not required, but when provided, the room shall have:

(A) a minimum clear floor area of at least 80 square feet exclusive of fixed or moveable cabinets, counters, or shelves; and

(B) a work counter with space for writing and hand washing facilities.

(16) Medical waste processing. Space and facilities shall be provided for the safe storage and disposal of waste as appropriate for the material being handled and in compliance with all applicable rules and regulations.

(e) Details.

(1) Corridors.

(A) Public corridor. The minimum clear and unobstructed width of a public corridor shall be at least four feet.

(B) Communicating corridor. The communicating corridor shall be used to convey patients by stretcher, gurney, or bed.

(i) The communicating corridor shall link the preoperative holding area, operating rooms(s), and recovery room(s), and shall be continuous to at least one exit.

(ii) The minimum clear and unobstructed width of the communicating corridor shall be eight feet.

(2) Doors and windows.

(A) Door types. Doors at all openings between corridors and rooms or spaces subject to occupancy shall be swing type. Elevator doors are excluded from this requirement.

(B) Door swing. Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk-in type closets are considered as occupiable spaces.

(C) Patient access doors. The minimum width of doors for patient access to examination and consultation rooms shall be three feet. The minimum width of doors requiring access for beds and gurneys (preoperative holding area, operating room, recovery room) shall be three feet eight inches.

(D) Emergency access. At least one door into a patient use toilet room shall swing outward or have hardware to permit access from the outside in an emergency.

(E) Labeled doors. Labeled fire doors shall be listed by an independent testing laboratory and shall meet the construction requirement for fire doors in NFPA 80, "Standard for Fire Doors and Fire Windows," 1995 edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(F) Glazing. Glass doors, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches above the finished floor shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings unless otherwise required for fire safety. Safety glass, tempered glass, or plastic glazing materials shall be used for shower doors, bath enclosures, interior windows, and doors (which have glazing).

(3) Ceiling heights. The minimum ceiling height shall be eight feet with the following exceptions.

(A) Rooms containing ceiling-mounted light fixtures or equipment. Operating rooms or other rooms containing ceiling-mounted light fixtures or equipment shall have ceiling heights of not less than nine feet. Additional ceiling height may be required to accommodate special fixtures or equipment.

(B) Minor rooms. Ceilings in storage rooms, toilet rooms, and other minor rooms shall be not less than seven feet six inches.

(C) Special requirements. Suspended tracks, rails, pipes, signs, lights, door closures, exit signs, and other fixtures that protrude into the path of normal traffic shall be not less than six feet eight inches above the finished floor.

(4) Toilet room accessories. Grab bars shall be provided at water closets and showers in accordance with the ADA.

(5) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands free controls shall be provided in each examination room, preoperative area, recovery room, soiled utility room, fluoroscopy room, clean work room, and toilet room. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be conveniently located for staff use in rooms and areas noted under spacial requirements in subsection (d) of this section and throughout the center where patient care services are provided.

(6) Hand drying. Provisions for hand drying shall be included at all hand washing facilities except scrub sinks. Hot air dryers or individual paper units shall be provided and must be enclosed in such a way as to provide protection against dust or soil. Paper dispensing units shall provide for single unit dispensing.

(7) Radiation protection. Shielding shall be designed, tested, and approved by a medical physicist licensed under the Medical Physics Act, Occupations Code, Chapter 602. The ASC must obtain a certificate of registration issued by the Bureau of Radiation Control to use radiation machines.

(8) Rooms with heat producing equipment. Rooms containing heat producing equipment such as mechanical and electrical equipment and laundry rooms shall be insulated and ventilated to prevent floors of any occupied room located above it from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(f) Finishes.

(1) Floor finishes.

(A) General. Floor materials shall be easily cleanable, wear resistant, and appropriate for the location involved. In areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower areas and certain work areas, shall have nonslip surfaces.

(B) Operating rooms and sterilizing facility(ies).

(i) Floor finishes shall be seamless, be tightly sealed to the wall without voids, and be impervious to water.

(ii) Base materials shall be coved and integral with the floor.

(iii) Welded joint flooring is acceptable.

(C) Threshold and expansion joint covers. Thresholds at doorways may not exceed 3/4 inch in height for exterior sliding doors or 1/2 inch for other type doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. Expansion joint covers may not exceed 1/2 inch in height and shall have beveled edges with a slope no greater than 1:2.

(2) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall be in compliance with the requirements of NFPA 101, §26-3.3, relating to flame spread.

(A) Finishes at plumbing fixtures. Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(B) Wet cleaning methods. Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed; and without voids.

(3) Ceiling finishes.

(A) General. All occupied rooms and spaces shall be provided with finished ceilings, unless otherwise noted. Ceilings which are a part of a rated roof and ceiling assembly or a floor-ceiling assembly shall be constructed of listed components (by a nationally recognized testing laboratory) and installed in accordance with the listing.

(B) Monolithic ceilings. Ceilings in operating rooms and sterilizing facilities shall be monolithic from wall to wall, smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(C) Special requirements. Finished ceilings may be omitted in mechanical and equipment spaces, shops, and similar spaces unless required for fire-resistive purposes.

(4) Floor, wall, and ceiling penetrations. Floor, wall, and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents, and insects. Joints of structural elements shall be similarly sealed.

(5) Cubicle curtains, draperies, and other hanging fabrics. Cubicle curtains, draperies, and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and large scale test of NFPA 701, "Standard Methods of Fire Tests for Flame-Resistant Textiles and Films," 1996 edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(g) Elevators. All buildings that have patient services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed to ensure that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.

(1) Requirements for new elevators. New elevators shall be installed in accordance with the requirements of Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment, and ASME A17.1, "Safety Code for Elevators and Escalators," 1990 latest edition, published by the American Society of Mechanical Engineers and the American National Standards Institute (ASME/ANSI A17.1). All new elevators shall conform to the Fire Fighters' Service Requirements of ASME/ANSI A17.1 requirements of NFPA 101, §7-4.4. All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) Requirements for existing elevators. Existing elevators shall comply with the ASME/ANSI A17.1, Safety Code for Elevators and Escalators, current edition, Part XII "Alterations, Repair, Replacements, and Maintenance" and ASME A17.3 "Safety Code for Existing Elevators and Escalators," current edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §7-4.5.

(3) Elevator machine rooms. Elevator machine rooms that contain solid-state equipment for elevators having a travel distance of more than 50 feet above the level of exit discharge or more than 30 feet below the level of exit discharge shall be provided with independent ventilation or air-conditioning systems with the capability to maintain an operating temperature during fire fighter service operations. The operating temperature shall be established by the elevator equipment manufacturer's specifications and shall be posted in each such elevator machine room. When standby power is connected to the elevator, the machine room ventilation or air conditioning shall be connected to standby power. These requirements are not applicable to existing elevators.

(4) Elevator car size.

(A) Minimum elevator car size shall be five feet wide and five feet deep.

(B) When an operating room(s) is located on a floor other than the preoperative and recovery floors a hospital-type elevator shall be provided. Cars of hospital-type elevators shall be at least five feet eight inches wide by eight feet five inches deep.

(5) Elevator and elevator shaft doors. When light beams are used for operating door opening devices, the beams shall be used in combination with door edge devices and shall be interconnected with a system of smoke detectors. The light control feature shall be disengaged when smoke is detected in any elevator lobby.

(A) The smallest elevator car door opening shall be at least three feet wide and seven feet high.

(B) The elevator car door opening for a hospital-type elevator shall be at least 44 inches wide and seven feet high.

(6) Type of controls and alarms. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

(7) Leveling. All elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of one-half inch.

(8) Operation. All elevators, except freight elevators, shall be equipped with a two-way key operated service switch permitting cars to bypass all landing button calls and be dispatched directly to any floor.

(9) Accessibility of controls and alarms. Elevator controls, alarm buttons, and telephones shall be accessible to wheelchair occupants in accordance with the Americans with Disabilities Act.

(10) Location. Elevators shall not open to an exit.

(11) Testing. An ASC shall have all elevators and escalators routinely and periodically inspected and tested in accordance with ASME/ANSI A17.1. All elevators equipped with fire fighter service shall be subject to a monthly operation with a written record of the findings made and kept on the premises as required by NFPA 101, §7-4.8, "Elevator Testing".

(12) Certification. An ASC shall obtain a certificate of inspection evidencing that the elevators and related equipment were inspected in accordance with the requirements in Health and Safety Code (HSC), Chapter 754, Subchapter B, and determined to be in compliance with the safety standards adopted under HSC, §754.014, administered by the Texas Department of Licensing and Regulation. The certificate of inspection shall be on record in each center.

(h) Mechanical requirements. This subsection contains requirements for mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation.

(1) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering practices shall be followed to achieve the most economical and effective results except that in no case shall patient care or safety be sacrificed for conservation.

(2) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in a separate building(s).

(3) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc. connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(4) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or his representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

(A) Material lists. Upon completion of the contract, the owner shall obtain from the construction contractor parts lists and procurement information with numbers and description for each piece of equipment.

(B) Instructions. Upon completion of the contract, the owner shall obtain from the construction contractor instructions in the operational use and maintenance of systems and equipment as required.

(5) Heating, ventilating, and air conditioning (HVAC) systems.

(A) All central HVAC systems shall comply with and shall be installed in accordance with the requirements of NFPA 90A, "Standard for the Installation of Air Conditioning and Ventilating Systems," 1996 edition, or NFPA 90B, "Standard for the Installation of Warm Air Heating and Air-Conditioning Systems," 1996 edition, as applicable and the requirements contained in this subparagraph. Air handling units serving two or more rooms are considered to be central units.

(B) Non-central air handling systems, i.e., individual room units that are used for heating and cooling purposes (e.g., fan-coil units, heat pump units, and packaged terminal air conditioning units) shall be equipped with permanent (cleanable) or replaceable filters. The filters shall have an average efficiency of 25-30% and an average arrestance of 85% based on ASHRAE Test Standard 52.1-92. These units may be used as air recirculating units only. All outdoor air requirements shall be met by a separate central air handling system with the proper filtration, as required in Table 1 in §135.54(a) of this title (relating to Tables).

(C) Ventilation system requirements. All rooms and areas in the center shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table 1 of §135.54(a) of this title shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate.

(i) Temperatures and humidities. The designed capacity of the systems shall be capable of providing the following ranges of temperatures and humidities.

(I) Operating room. The systems serving the operating room shall be capable of maintaining a temperature range between 68 and 75 degrees Fahrenheit and a relative humidity range between 45% and 60%.

(II) Recovery room. The system serving the recovery room shall be capable of maintaining a temperature of 75 degrees Fahrenheit and a relative humidity range between 45% and 60%.

(III) Other areas. The indoor design temperature in all other patient care areas shall be 75 degrees Fahrenheit with relative humidity of not less than 30%.

(ii) Temperature and humidity gauges. Each operating room and recovery room shall have temperature and humidity indicating devices mounted at 60 inches above finished floor within the room.

(iii) Air handling duct requirements. Fully ducted supply, return and exhaust air systems shall be provided for all patient care areas. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted. Ductwork access panels shall be labeled.

(I) X-ray protection. Ducts which penetrate construction intended for X-ray or other ray protection shall not impair the effectiveness of the protection.

(II) Protection of ducts penetrating fire and smoke partitions. Combination fire and smoke leakage limiting dampers (Class II) shall be installed in accordance with manufacturer's instructions for all ducts penetrating 1 and 2-hour rated fire and smoke partitions required by NFPA 101, §12-6.3.7 "Subdivision of Building Space" (not required in ASCs meeting the provisions of NFPA 101, §12-6.3.7.3, Exception).

(-a-) Fail-safe installation. Combination smoke and fire dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by NFPA 72, Chapter 5, "National Fire Alarm Code," 1996 edition; NFPA 90A, Chapter 4; and NFPA 101, §12-6.3.7; the fire sprinkler system; and

upon loss of power. Smoke dampers shall not close by fan shut-down alone. This requirement applies to all existing and new installations.

(-b-) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls shall be interlocked so that closing of smoke dampers will not damage the ducts.

(-c-) Frangible devices. The use of frangible (nonresetting) devices for shutting smoke dampers shall not be permitted.

(iv) Outside air intake locations.

(I) Outside air intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum system outlets, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements).

(II) Plumbing and vacuum vents that terminate five feet above the level of the top of the air intake may be located as close as 10 feet to the air intake.

(III) The bottom of outside air intakes shall be located not less than six feet above ground level. The bottom of outside air intakes located on a roof shall be not less than three feet above the adjacent roof level.

(v) Air exhaust outlets. Exhaust outlets from areas containing ethylene oxide sterilizers and other contaminants, e.g. glutaraldehyde, shall terminate not less than eight feet above the roof level (or be appropriately labeled as "hazardous exhaust") and arranged to exhaust upward.

(vi) Pressure relationship. Ventilation systems shall be designed and balanced to provide pressure relationships contained in Table 1 of §135.54(a) of this title. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 1 of §135.54(a) of this title shall be followed.

(vii) Air Distribution Devices. Supply diffusers grilles located in operating rooms and other anesthetizing locations shall be located on the ceiling or on a wall near the ceiling and bottoms of return air grilles in operating rooms and other anesthetizing locations shall be located not more than 12 inches above the finished floor nor less than six inches above the finished floor. At least two return air outlets shall be provided in each operating room on opposing walls or opposite corners.

(viii) Ventilation start-up requirements. Air handling systems shall not be operated without the proper installation of the filter in accordance with the manufacturer recommendation or instruction. This includes the 90% efficiency filters where required. Ducts shall be cleaned thoroughly by a National Air Duct Cleaner Association (NADCA) certified air duct cleaning contractor when the air handling systems have been operated without the required filters in place. This includes construction operations.

(ix) Humidifier location. When duct humidifiers are located upstream of the final filters, they shall be located at least 15 feet from the filters. Duct work with duct-mounted humidifiers shall be provided with a means of removing water accumulation. An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential of condensation inside the duct. All duct takeoffs should be sufficiently downstream of the humidifier to ensure complete moisture absorption. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

(x) Filtration requirements. All air handling units shall be equipped with filters having efficiencies equal to, or greater than, those specified in Table 2 of §135.54(b) of this title. Filter efficiencies shall be average dust spot efficiencies tested in accordance with American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, "Gravimetric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter," 1992 edition. All joints between filter segments, and between filter segments and the enclosing ductwork, shall have gaskets and seals to provide a positive seal against air leakage. All documents published by ASHRAE as referenced in this section may be obtained by writing or calling the ASHRAE, Inc. at the following address or telephone number: ASHRAE, Inc., 1791 Tullie Circle, N. E., Atlanta, GA 30329; telephone (404) 636-8400.

(I) Location of multiple filters. When two filter beds are required by Table 2 of §135.54(b) of this title, filter bed No. 1 shall be located upstream of the air-conditioning equipment, and filter bed No. 2 shall be located downstream of the supply fan or blowers.

(II) Location of single filters. Where only one filter bed is required by Table 2 of §135.54(b) of this title, it shall be located upstream of the cooling and heating coils.

(III) Duct linings. Friable internal linings shall not be used in ducts, air terminal units, or other air system components supplying operating rooms and post anesthesia recovery rooms unless terminal filters of at least 90% efficiency are installed downstream of linings. This requirement shall not apply to air terminal units and sound attenuators that have approved nonfriable coverings, e.g., foil facing, over such linings.

(xi) Pressure monitoring devices. A manometer or draft gauge shall be installed across each filter bed having a required efficiency of 75% or more, including laboratory hoods requiring high efficiency particulate air (HEPA) filters.

(xii) Ventilation for anesthetizing locations. Ventilation for anesthetizing locations (defined in NFPA 99, §2-2) shall comply with NFPA 99, §13-4.1.2.1 and the requirements of subclauses (I) and (II) of this clause.

(I) Smoke removal systems for anesthetizing locations (surgical suites). Supply and exhaust systems for windowless anesthetizing locations shall be arranged to automatically exhaust smoke and products of combustion, prevent recirculation of smoke originating within the surgical suite, and prevent the circulation of smoke entering the system intakes, without in either case interfering with the exhaust function of the system as required by NFPA 99, §5-4.1.3.

(II) Smoke exhaust grilles. Exhaust grilles for smoke evacuation systems shall be ceiling-mounted or on the wall near the ceiling.

(D) Thermal and acoustical insulation for air handling systems. Asbestos containing insulation materials shall not be used.

(i) Thermal duct insulation. Air ducts and casings with outside surface temperature below the ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(ii) Insulation in air plenums and ducts. When installed, linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Standard 181, "Factory-Made Duct Materials and Air Duct Connectors." This document may be obtained from the Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

(iii) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A, Chapters 2 and 3 and as determined by an independent testing laboratory in accordance with NFPA 255, A Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition.

(iv) Friable insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance problem or occupant discomfort.

(6) Piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the Uniform Plumbing Code, 1997 Edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Plumbing Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(A) Water supply piping systems. Water supply piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(i) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(ii) Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibs, laboratory sinks, janitor sinks, bedpan flushing attachments, and on all other fixtures to which hoses or tubing can be attached. Connections to high hazard sources, e.g., x-ray film processors, shall be from a cold water hose bibb through a reduced pressure principle type backflow preventer (RPBFP).

(iii) Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(iv) Water storage tanks. Water storage tanks shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

(B) Fire sprinkler systems. When provided, fire sprinkler systems shall comply with the requirements of NFPA 101, §7-7 "Automatic Sprinklers and Other Extinguishing Equipment" and the requirements of this clause. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA 13, "Standard for the Installation of Sprinkler Systems," 1996 edition, and shall be certified as required by §135.53(e)(4) of this title (relating to Preparation, Submittal Review, and Approval of Plans).

(C) Piped nonflammable medical gas and clinical vacuum systems. When provided, piped nonflammable medical gas and clinical vacuum system installations shall be designed, installed and certified in accordance with the requirements of NFPA 99, §4-3 for "Level 1 Piped Systems" and the requirements of this subparagraph.

(i) Outlets. Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with Table 3 of §135.54(c) of this title.

(ii) Installer qualifications. All installations of the medical gas piping systems shall be done only by, or under the direct supervision of a holder of a master plumber license or a journeyman plumber license with a medical gas piping installation endorsement issued by the Texas State Board of Plumbing Examiners.

(iii) Installer tests. Prior to closing of walls, the installer shall perform an initial pressure test, a blowdown test, a secondary pressure test, a cross-connection test, and a purge of the piping system as required by NFPA 99.

(iv) Qualifications for conducting verification tests and inspections. Verification tests and inspections by a party, other than the installer, shall be conducted by individuals who are technically competent and experienced in the field of piped medical gas systems.

(v) Verification tests. Upon completion of the installer inspections and tests and after closing of walls, verification tests of the medical gas piping systems, the warning system, and the gas supply source shall be conducted. The verification tests shall include a cross-connection test, valve test, flow test, piping purge test, piping purity test, final tie-in test, operational pressure tests, and medical gas concentration test.

(vi) Verification test requirements. Verification tests of the medical gas piping system and the warning system, shall be performed on all new piped medical gas systems, additions, renovations, or repaired portions of an existing system. All systems that are breached and components that are added, renovated, or replaced shall be inspected and appropriately tested. The breached portions of a system shall be repaired with all new components in the immediate zone or area located upstream of the point or area of intrusion and downstream to the end of the system or at a properly installed isolation valve.

(vii) Warning system verification tests. Verification tests of piped medical gas systems shall include tests of the source alarms and monitoring safeguards, master alarm systems, and the area alarm systems.

(viii) Source equipment verification tests. Source equipment verification tests shall include medical gas supply sources (bulk and manifold) and the compressed air source systems (compressors, dryers, filters, and regulators).

(ix) Written certification. Written certification for piped medical gas and vacuum systems including the supply sources and warning systems shall be provided by a party technically competent and experienced in the field of medical gas pipeline testing. The certification shall document compliance with NFPA 99 and the integrity of the completed system. The written certification shall be submitted directly to the ASC and the installer. A copy shall be available at final department construction inspection.

(x) Facility responsibility. Before new piped medical gas systems, additions, renovations, or repaired portions of an existing system are put into use, ASC medical personnel shall verify that the gas delivered at the outlet corresponds with labeling required at each outlet.

(xi) Documentation of medical gas and clinical vacuum outlets. Documentation of the installed, modified, extended or repaired medical gas piping system shall be submitted to the department by the same party certifying the piped medical gas systems. The number and type of medical gas outlets (e.g., oxygen, vacuum, medical air, nitrogen, nitrous oxide) shall be documented and arranged tabularly by room numbers and room types.

(D) Waste anesthetic gas disposal (WAGD) systems. Each space routinely used for administering inhalation anesthesia shall be provided with a WAGD system as required by NFPA 99, §4-3.3.

(7) Steam and hot water systems.

(A) Boilers. When provided, boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute or another acceptable national standard, to supply the normal heating, hot water, and steam requirements of all systems and equipment.

(i) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(ii) Boiler certification. When required, the ASC shall ensure compliance with Texas Department of Licensing and Regulation, Boiler Section, Texas Boiler Law, 1995 (Health and Safety Code, Chapter 755, Boilers), which requires certification documentation for boilers to be posted on site at each boiler installation.

(B) Domestic hot water system. Hot water distribution system serving all patient care areas shall be under constant recirculation to provide continuous hot water at each hot water outlet.

(i) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for all clinical needs based on accepted engineering practices using actual number and type of fixtures and for heating, when applicable.

(ii) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment. Hot water temperature at point of use for patients, staff and visitors shall not exceed 110 degrees Fahrenheit.

(8) Drainage systems. Building sewers shall discharge into a community sewage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

(A) Above ground piping. Soil stacks and roof drains installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be: copper pipe, copper tube, cast iron pipe, or Schedule 40 polyvinyl chloride (PVC) pipe. Buildings or portions of buildings remodeled to an ASC need not comply with this requirement.

(B) Underground piping. All underground building drains shall be cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butodiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), or PVC pipe (DWV Schedule 40 or heavier. Underground piping shall have at least 12 inches of earth cover or comply with local codes. Existing building or portions of buildings that are being remodeled need not comply with this subparagraph.

(C) Drains for chemical wastes. Separate drainage systems for chemical wastes (acids and other corrosive materials) shall be provided. Materials acceptable for chemical waste drainage systems shall include chemically resistant borosilicate glass pipe, high silicone content cast iron pipe, polypropylene plastic pipe, or plastic lined pipe.

(9) Thermal insulation for piping systems and equipment. Asbestos containing insulation materials shall not be used.

(A) Insulation. Insulation shall be provided for the following:

(i) boilers, smoke breeching, and stacks;

(ii) steam supply and condensate return piping;

(iii) hot water piping and all hot water heaters, generators, converters, and storage tanks;

(iv) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur. Insulation on cold surfaces shall include an exterior vapor barrier; and

(v) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(B) Flame spread. Flame spread shall not exceed 25 and smoke development rating shall not exceed 50 for pipe insulation as determined by an independent testing laboratory in accordance with NFPA 255, "Standard Method of Test of Surface Burning Characteristics of Building Materials," 1996 edition.

(10) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive, acid resistant materials and shall comply with the requirements of the Uniform Plumbing Code, 1997 edition, and this paragraph.

(A) Sink and lavatory controls. All lavatories used by medical and nursing staff and by patients shall be trimmed with valves or electronic controls which can be operated without the use of hands. Blade handles used for this purpose shall not be less than four inches in length. Single lever or wrist blade devices may also be used.

(B) Clinical sink traps. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(C) Sinks for disposal of plaster of paris. Sinks that are used for the disposal of plaster of paris shall have a plaster trap.

(D) Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the back-flow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(E) Drinking fountain. Each drinking fountain shall be designed so that the water issues at an angle from the vertical, the end of the water orifice is above the rim of the bowl, and a guard is located over the orifice to protect it from lip contamination and in compliance with the American Disabilities Act.

(F) Sterilizing equipment. All sterilizing equipment shall be designed and installed to prevent not only the contamination of the water supply but also the entrance of contaminating materials into the sterilizing units.

(G) Hose attachment. No hose shall be affixed to any faucet if the end of the hose can become submerged in contaminated liquid unless the faucet is equipped with an approved, properly installed vacuum-breaker.

(H) Bedpan washers and sterilizers. When provided, bedpan washers and sterilizers shall be designed and installed so that both hot and cold water inlets shall be protected against back-siphonage at maximum water level.

(I) Flood level rim clearance. The water supply spouts for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

(J) Scrub sink controls. Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or electronic hands-free controls. Single lever wrist blades are not acceptable at scrub sinks.

(K) Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned

by removal of the cover. Removable stainless steel mesh shall be provided in addition to a grilled drain cover to prevent entry of large particles of waste which might cause stoppages.

(L) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of the floor below the equipment.

(11) Moisture sensor. A moisture sensor with remote indicator light or drainage system shall be provided for the drain pans located beneath the plumbing lines above operating rooms.

(i) Electrical requirements. All electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the NFPA 70, "National Electrical Code," 1996 edition, §517-50; NFPA 99, Chapter 13; the requirements of this subsection; and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturer's instructions.

(1) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

(2) Extension cords and cables shall not be used for permanent wiring.

(3) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(4) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(5) Under-counter electrical installations shall be arranged (raised) to not interfere with cleaning of the floor below the equipment.

(6) Installation testing and certification.

(A) Installation testing. The electrical installations, including grounding continuity, fire alarm, nurses calling system and communication systems, shall be tested to demonstrate that equipment installation and operation is appropriate and functional. A written record of performance tests on special electrical systems and equipment must show compliance with applicable codes and standards and shall be available to the department upon request.

(B) Installation certification. Certifications, in affidavit form, signed by a registered electrical engineer attesting that the electrical service, electrical equipment, and electrical appliances have been installed in compliance with the approved plans and applicable standards, shall be submitted to the department upon request.

(7) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(8) Services and switchboards. Main switchboards shall be located in an area separate from plumbing and mechanical equipment and shall be accessible to authorized persons only. Switchboards shall be convenient for use, readily accessible for maintenance, away from traffic lanes, and located in dry, ventilated spaces free of corrosive or explosive fumes, gases, or any flammable material. Overload protective devices must operate properly in ambient temperatures.

(9) Panelboard. Distribution panels containing circuit breakers which control lighting and power to essential and normal electrical circuits shall be located within the ASC.

(10) Wiring. All conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in metal or metallic raceways in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(11) Lighting.

(A) Lighting intensity for staff and patient needs shall comply with guidelines for health care facilities set forth in the Illuminating Engineering Society of North America (IES) Handbook published by the Illuminating Engineering Society of North America, 120 Wall Street, New York, NY 10005.

(i) Consideration should be given to controlling light intensity and wavelength to prevent harm to the patient's eyes.

(ii) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all spaces shall be clearly visible.

(iii) Consideration should be given to the special needs of the elderly. Excessive contrast in lighting levels that makes effective sight adaptation difficult shall be minimized.

(B) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§5-8, 5-9 and 5-10.

(C) Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

(D) Ceiling mounted surgical and examination light fixtures shall be suspended from rigid support structures mounted above the ceiling.

(E) Operating rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

(F) X-ray film illuminators for handling at least two films simultaneously shall be provided in each operating room and special procedure room.

(12) Receptacles. Only listed hospital grade grounding receptacles shall be used in the operating rooms and post anesthesia recovery area. This does not apply to special purpose receptacles.

(A) Installations of multiple ganged receptacles shall not be permitted in patient care areas.

(B) All receptacles powered from the critical branch shall be colored red.

(C) Replacement of malfunctioning receptacles and installation of new receptacles powered from the critical branch in existing facilities shall be accomplished with receptacles of the same distinct color as the existing receptacles.

(D) In locations where mobile X-ray or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(E) Each receptacle shall be grounded to the reference grounding point by means of a green insulated copper equipment grounding conductor in accordance with NFPA 70, §517-13.

(F) Each operating room and special procedure room shall have at least four duplex receptacles located convenient to the head of the procedure table and one receptacle on the other walls.

(G) Appliances shall be grounded in accordance with NFPA 99, Chapter 9.

(H) A minimum of one duplex receptacle in each wall shall be installed in each work area or room other than storage or lockers. Each examination and work table shall have access to a minimum of two duplex receptacles.

(13) Equipment.

(A) The following shall be powered from the Type I essential electrical system in accordance with the requirements of NFPA 99, §3-4.2.2.3 when such a system is required for safe operation of the ASC referenced in paragraph (17) of this subsection.

(i) Boiler accessories including feed pumps, heat-circulating pumps, condensate return pumps, fuel oil pumps, and waste heat boilers shall be connected to the equipment system.

(ii) Ventilating system serving preoperative areas, operating rooms, and post anesthesia recovery rooms shall be connected to the equipment system in accordance with the requirements of NFPA 99, Chapter 3.

(B) Laser equipment shall be installed according to manufacturer recommendations and shall be registered with the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(C) A "kill switch" shall be provided for disconnection of each HVAC serving the building.

(14) Wet patient care location. Wet patient care locations shall be protected against shock in accordance with the requirements of NFPA 99, §3-3.2.1.2(f).

(15) Grounding requirements. Fixed electrical equipment shall be grounded in accordance with the requirements of NFPA 99, §3-3.1.2 and NFPA 70, Article 517-13.

(16) Nurses calling systems.

(A) A nurse emergency calling system shall be installed in all toilets used by patients to summon nursing staff in an emergency. Activation of the system shall sound an audible signal which repeats every five seconds at a staffed location and shall activate a distinct visible signal outside of toilet room where the call originated. The visible and audible signals shall be cancelable only at the patient calling station. Activation of the system shall also activate distinct visible signals in the clean workroom, in the soiled workroom, and if provided, in the nourishment station.

(B) A staff emergency assistance calling system station shall be located in each operating room, treatment room, examination room, recovery and preoperative holding area to be used by staff to summon additional help in an emergency. Activation of the system shall sound an audible signal at a staffed location, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the door. Additional visible signals shall be installed at corridor intersections in multi-corridor facilities. Distinct visible and audible signals shall be activated in the clean workroom, in soiled workroom, and if provided, in the nourishment station.

(17) Essential electrical system. The essential electrical system shall comply with the requirements of NFPA 99, §13-3.3.2.

(A) A Type 1 essential electrical system shall be installed, maintained and tested in each facility in accordance with requirements of NFPA 99, §3-4; NFPA 101, §12.6.2.9; and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1996 edition.

(i) All autoclaving/sterilizing equipment shall be connected to the emergency power system.

(ii) One electrical outlet connected to the life safety branch of the electrical system shall be provided adjacent to (or on) the emergency generator.

(iii) The battery charger for emergency lighting at the emergency generator shall be connected to the life safety branch of the electrical system.

(B) Fuel storage capacity for an on-site generator for a Type 1 essential electrical system shall allow continuous operation, under full load for eight hours and six months of testing as required by NFPA 99, §3-4.4.1.1(b).

(18) Fire alarm system. A fire alarm system which complies with the requirements of NFPA 101, §12-6.3.4; NFPA 70, Article 760; and NFPA 72, Chapter 3 requirements, shall be provided in each facility.

(A) Fire alarm system shall be installed by or under direct supervision of a fire alarm installer licensed by the State Fire Marshal.

(B) The ASC shall submit a copy of the Fire Alarm Installation Certificate (State Fire Marshal's form FML 009 040392) to the department for all new installations and for any material changes to the existing systems.

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

Filed with the Office of the Secretary of State on September 9, 2002.

TRD-200205889
Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENT'S LICENSING
SUBCHAPTER I. LICENSING FEES

28 TAC §§19.801 - 19.803

The Commissioner of Insurance adopts amendments to §§19.801 and 19.802 and new §19.803 concerning licensing, registration, examination, and appointment fees. The sections are adopted without changes to the proposed text as published in the July 26, 2002, issue of the *Texas Register* (27 TexReg

6623), and the correction to §19.801(a)(1) published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7651) and will not be republished.

The sections are necessary to implement license type and fee changes required by amendments to the Insurance Code by Senate Bill 414, 77th Legislature, to maintain effective regulation of insurance licensees by establishing fees sufficient to cover department administration costs, which include licensure, enforcement of disciplinary requirements, and market conduct examinations, among other regulatory protections and the Texas OnLine subscription fee created by amendments to Government Code §2054.252(g).

Adopted amendments to §19.801 instruct original license applicants and full-time home office salaried employee registrants when and to whom fee payments are required to be made and provide that fees are not refundable, transferable, or reducible except as provided. Amendments to §19.802(b) list the general lines - life, accident, and health agent, general lines - property and casualty agent, limited lines agent, county mutual agent, funeral prearrangement life insurance agent, and life insurance not exceeding $15,000 agent license types and full-time home office salaried employee registration, and set application, renewal, and appointment fees for these license types and the full-time home office salaried employee registration fee. The amendments to §19.802(b) also set all department administered examination fees at $50 subject to the provision in the existing rule that the examination fees will only apply if the department does not contract with a designated testing service.

As required under Government Code §2054.152, the amendments to §19.802(b) reflect the $3 subscription fee that has been assessed against each license type that is renewable online through the Texas OnLine Authority.

The amendments to §19.802(b)(7)(A) and (B) increase the original application and renewal fee for insurance service representatives to $50. The amendments to §19.802(b)(8)(A) and (E) increase the original application fee for managing general agents to $50 and set an emergency application fee of $50. Amendments to §19.802(b)(11) clarify that each of the six license authorities available for specialty license holders requires a separate license and renewal fee. The amendment to §19.802(b)(18) sets a standard fee for the expanded range of temporary license applications authorized under Insurance Code Article 21.07 §3A. The amendments to §19.802(c) clarify the fee requirements for the limited lines agent license type authorized by Insurance Code Articles 21.07-1 §4 and 21.14 §6. The amendments to §19.802(d) clarify the fee requirements for the general lines agents appointed as subagents. The amendment to §19.802(e) clarifies that fees are the same for residents and nonresidents and that Insurance Code Article 21.11 does not create a license type.

Section §19.803 clarifies that the increases in renewal fees required by the Government Code §2054.252 will affect only licensees having a license renewal date on or after November 1, 2002, and sets the renewal fee for licensees with license renewal dates before that date.

No comments were received.

The amendments and new section are adopted under Government Code §2054.252 and Insurance Code Articles 1.14-2, 21.01, 21.01-1, 21.01-2, 21.07, 21.07-4, 21.07-7, 21.09, 21.14-1, 21.14-2 and §36.001. Government Code §2054.252 (g) requires the department to raise licensing fees in an amount sufficient to cover the Texas OnLine Authority subscription fee cost. Insurance Code Article 1.14-2 §§3A and 4(b) authorize the department to charge and set licensing fees for surplus lines agent licenses and adopt necessary rules. Article 21.01 §4 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 21, Subchapter A. Article 21.01-1 §2(b) authorizes the department to charge and set agent licensing examination fees. Article 21.01-2 §1A(b) authorizes the department to set license renewal fees. Article 21.07 §6 (a) and (d) authorize the department to charge and set agent appointment fees. Article 21.07 §6C(a) authorizes the department to collect a nonrefundable license fee from each agent of an insurance carrier writing business in this state. Article 21.07 §6C(c) authorizes the department to set fees that are reasonable and necessary to implement Insurance Code Chapter 21, Subchapter A. Article 21.07-2 §5(a) states that life and health insurance counselors are subject to the same licensing requirements as are applicable to agents under Insurance Code Chapter 21, Subchapter A. Article 21.07-4 §§14 and 24 authorize the department to establish licensing and examination fees for adjusters and adopt necessary rules. Article 21.07-7 §§4 and 11 authorize the department to establish licensing fees for reinsurance intermediary managers and brokers and adopt rules. Article 21.09 §1(b)(3) authorizes the department to establish licensing fees for specialty insurance agents. Article 21.14-1 §§7 and 15 authorize the department to establish licensing and examination fees for risk managers and adopt rules. Article 21.14-2 §§2 and 5 authorize the department to establish an appointment fee for agricultural insurance agents and adopt rules. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute 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 September 6, 2002.

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Commission adopts amendments to §§65.318, 65.320, and 65.321, concerning the Migratory

Game Bird Proclamation, with changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3707). Changes to all three sections are necessitated by actions of the U.S. Fish and Wildlife Service (Service), consisting of, first, an extension of the season frameworks to give states a greater length of time in which to situate waterfowl seasons, and secondly, to close the season on canvasbacks, curtail the season on pintails, and increase the bag limit on Canada geese in the Eastern Goose Zone. The change to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season Species, creates an earlier first segment for ducks in the High Plains Mallard Management Unit and a later first segment for ducks in both the north and south zones. The change also lengthens the second segment in the High Plains Mallard Management Unit and the North Duck Zone. In taking advantage of the opportunity offered by the Service, the department has also found it necessary to implement a differential season for light geese in the Eastern Zone, offering a longer season north of Interstate Highway 10. The season north of IH 10 will be shorter than the season south of IH 35 in order to avoid conflict with the Special Conservation Order for light geese. The change also increases the bag limit on dark geese to three, no more than two white-fronted geese and no more than two Canada geese, shifts the youth-only season to run a week later statewide, closes the season for canvasback ducks, restricts the season for pintail ducks, and eliminates duplicative language for sandhill crane bag and possession limits.

The change to §65.320, concerning Extended Falconry Season--Late Season Species, also stems from the federal framework extensions, making it necessary to split the falconry opportunity such that the season will start in the North Zone one week later than proposed.

The change to §65.321, concerning Special Management Provisions, is necessitated by the differential season structure in the Eastern Goose Zone, and alters the conservation season opening dates to parallel the different closures dates for geese in the Eastern Zone.

The rules are necessary to discharge the agency's statutory duty under the Parks and Wildlife Code to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds and to implement commission policy to provide the greatest opportunity possible under the federal frameworks.

Section 65.318 will function by establishing the season lengths, bag limits, and bag composition for the hunting of waterfowl and sandhill crane in the state. Section 65.320 will function by establishing the season length, bag limit, and bag composition for the hunting of waterfowl in the state by means of falconry only. Section 65.321 will function by setting forth the means, methods, season lengths, bag limits, and special provisions for the take of light geese during the Special Conservation season.

The department received 115 comments concerning adoption of the proposed rules. Thirteen commenters stated that the restricted pintail season should occur in the early part of the duck season. The department disagrees and responds that migration chronologies indicate larger numbers of birds are present towards the end of the season frameworks, and notes as well that hunter preference surveys indicate the latter part of the framework is more desirable by a greater number of hunters. No changes were made as a result of the comments.

The department received 35 comments advocating opening dates and/or segment split combinations different from those adopted. The department disagrees with the comments and responds that the adopted opening dates and segments splits were selected because in the department's view, they provide the greatest opportunity to the greatest number of hunters, on the basis of both hunter preference and hunter behavior. No changes were made as a result of the comments.

The department received six comments recommending that deer season and duck season open on separate days so that people don't have to choose between the two. The department understands the dilemma facing the commenters, but disagrees and responds that the commission's longstanding policy has been to create as much hunting opportunity as is biologically prudent and/or legally allowed. The establishment of seasons at their maximum length is consistent with that policy, and although the department regrets any inconvenience, the interests of a greater number of constituents are served by the rules as adopted. No changes were made as a result of the comments.

The department received five comments requesting that the goose season in the Western Zone begin and end later in the framework. The department agrees with the comments and made changes accordingly

The department received four comments advocating a reduction in season lengths and/or bag limits for ducks, stating fears that the resource was being over utilized. The department disagrees with the comments and responds that the season lengths and bag limit options offered by the U.S. Fish and Wildlife Service emerge as a result of months of intensive review of biological data, and, if anything, err on the side of caution. No changes were made as a result of the comments.

The department received three comments advocating a closure of the pintail season, stating concern for the resource. The department disagrees and responds that the federal frameworks contain a mandate for a greatly reduced pintail season of 39 days, which is the result of meticulous monitoring of both the population and hunter impacts. The department believes that the restricted season length is sufficient to safeguard the species from over harvest. No changes were made as a result of the comments.

The department received two comments requesting that the youth season take place earlier in the year. The department disagrees and responds that the policy of the commission has been to establish youth seasons one week earlier than general seasons in order to create over time a traditional time devoted to mentoring youth. No changes were made as a result of the comments.

The department received one comment in opposition to the federal framework extension. The department disagrees and responds that commission policy is to adopt the most liberal provisions possible under the federal frameworks. No changes were made as a result of the comments.

The department received 49 comments in favor of adoption of the proposed rules.

The Texas Wildlife Association commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one pintail, two redheads, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. There is no open season for canvasback.

(A) High Plains Mallard Management Unit: September 23-September 29, 2002, and October 26, 2002 - January 22, 2003. The open season for pintail begins December 12, 2002 and runs through January 19, 2003.

(B) North Zone: November 9-10, 2002 and November 16, 2002 - January 26, 2003. The open season for pintail begins December 19, 2002 and runs through January 26, 2003.

(C) South Zone: November 2 - December 1, 2002, and December 7, 2002 - January 19, 2003. The open season for pintail begins December 12, 2002 and runs through January 19, 2003.

(2) Geese.

(A) Western Zone.

(i) Light geese: October 26, 2002 - February 9, 2003. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 26, 2002 - February 9, 2003. The daily bag limit for dark geese is five, which may not include more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese. The daily bag limit for light geese is 20, and there is no possession limit.

(I) In that portion of the Eastern Zone lying north of IH 10: October 26, 2002 - January 26, 2003.

(II) In that portion of the Eastern Zone that is both south of IH 10 and east of IH 35: October 26, 2002 - January 19, 2003.

(ii) Dark geese:

(I) White-fronted geese: October 26, 2002 - January 19, 2003.

(II) Canada geese and brant: October 26, 2002 - January 19, 2003.

(III) The daily bag limit for dark geese is three, no more than two white-fronted geese or no more than two Canada geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 9, 2002 - February 9, 2003. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 30, 2002 - February 9, 2003. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 21, 2002 - January 19, 2003. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section, except that pintail ducks may be taken. The bag limit for pintail ducks is one per day. The possession limit is two. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 19-20, 2002;

(B) North Zone: October 26-27, 2002; and

(C) South Zone: October 26-27, 2002.

§65.320. Extended Falconry Season - Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 27 - February 17, 2003;

(B) South Duck Zone: January 20 - February 10, 2003.

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means , Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 27, 2003 through March 30, 2003, the take of light geese is lawful in that portion of the Eastern Zone lying north of IH 10.

(B) From January 20, 2003 through March 30, 2003, the take of light geese is lawful in that portion of the Eastern Zone that is both south of IH 10 and east of IH 35.

(C) From February 10, 2003 through March 30, 2003, the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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 September 6, 2002.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.286

The Comptroller of Public Accounts adopts an amendment to §3.286, concerning seller's and purchaser's responsibilities, with changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6801). The change occurs in subsection (e)(5), to correct a minor grammatical error. The phrase "must remit a tax" is changed to "must remit the tax".

The amendment incorporates recent statutory changes. House Bill 1098, 77th Legislature, 2001, amended Tax Code, §151.052, effective September 1, 2001, to allow a printer to accept a multistate exemption certificate from a purchaser if the printed materials are produced by a web offset or rotogravure printing process and the materials are delivered by the printer to a fulfillment house or the United States Postal Service for distribution to third parties located both in Texas and outside of Texas. The purchaser who gives the certificate is then responsible for reporting and paying sales or use taxes to the comptroller on those printed materials that are subject to tax. The adopted rule incorporates this change in subsections (d)(7) and (f)(4). Senate Bill 1123, 77th Legislature, 2001, amended Tax Code, Chapters 111 and 151, effective September 1, 2001, to provide certain penalties for various criminal offenses. The adopted rule addresses criminal offenses and penalties in subsections (b)(4), (h)(3), (i)(5), (j)(4), (n), and (o) and references a new rule concerning criminal offenses and penalties. Senate Bill 640, 77th Legislature, 2001, added Tax Code, §111.0625 and §111.0626, which require taxpayers who remitted $100,000 or more in sales or use tax during the preceding state fiscal year to file sales or use tax returns and payments electronically. Subsection (e)(4) of the adopted rule addresses these changes and references §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). In addition to the legislative changes, subsections (a)(3), (b)(3), and (d)(6) of the adopted amendment provide specific information regarding the sales or use tax responsibilities of direct sales organizations and their independent salespersons. This information reflects long-standing comptroller policy. The adopted amendment also adds subsection (e)(5), which sets out a date on which a non-permitted taxpayer should remit tax that a seller fails to collect. Finally, various subsections of the adopted rule are amended for the purposes of clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§111.024, 111.0625, 111.0626, 151.052, 151.7032, 151.708, 151.7102, and 151.714.

§3.286. Seller's and Purchaser's Responsibilities.

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

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer:

(A) maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in this state under the authority of the seller to sell, deliver, or take orders for any taxable items;

(C) promotes a flea market, trade day, or other event that involves sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that the comptroller has issued. A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items by the independent salespersons who sell the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations hold responsibility to maintain Texas permits and collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain a permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate permit under the same account is issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit cannot be transferred from one owner to another. The permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location, then only one permit is required.

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in the Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Tax must be reported and remitted to the comptroller as provided by the Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate under the same taxpayer number. Reports and payments that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must be filed on forms that the comptroller prescribes. The fact that the seller or purchaser does not receive the correct forms from the comptroller does not relieve the seller or purchaser of the responsibility to file a return and to pay the required tax.

(4) A seller or a purchaser who owes tax that was not collected by a seller, who remitted $100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(5) A non-permitted purchaser who owes sales or use tax that was not collected by a seller must remit the tax to the comptroller on or before the 20th of the month following the month in which the taxable event occurs.

(f) Reporting period.

(1) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31. The returns must be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than $1,000 state tax to report during a calendar year may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded $1,000 in the prior calendar year.

(C) A taxpayer who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than $1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than $1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so long as the yearly tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly returns.

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 of the next calendar year.

(3) Sellers, and purchasers who owe tax that was not collected by sellers, who have $1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) Each taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department (MTA/CTD) sales and use tax return must file the return at the same time that the state sales and use tax return is filed.

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1)-(3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of the tax. The discount is equal to 0.5% of the amount of tax due. Certain

sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.

(4) Remittances that are less than a reasonable estimate as required by paragraph (3) of this subsection are not regarded as prepayments. The 1.25% discount will not be allowed. If the taxpayer owes more than $1,500 in a calendar quarter, the taxpayer is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(5) If a taxpayer does not file a return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(6) Permit holders are required to file sales and use tax returns. A permit holder must file a sales and use tax return even if the permit holder has no sales or tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of $50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See § 3.305 of this title.

(i) Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out- of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller

of the seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of the Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(k) Refusal to issue permit. The comptroller is required by the Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(l) Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by Tax Code, §111.0046.

(m) Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(n) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(o) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title.

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 September 5, 2002.

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: September 25, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 475-0387

SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.834

The Comptroller of Public Accounts adopts a new §3.834, concerning volunteer fire department assistance fund assessment, without changes to the proposed text as published in the July 19, 2002, issue of the *Texas Register* (27 TexReg 6496).

In 2001, the Texas Legislature created the Rural Volunteer Fire Department Assistance Program under Government Code, §614.074, to assist rural volunteer fire departments with funding for equipment and training. To finance the program, the comptroller is required to collect an assessment totaling $15 million per year from certain insurers, beginning in 2002, and ending September 1, 2011. This new section provides information regarding the insurers that are required to pay the assessment, the types of policies on which the assessment is based, and the computation of each insurer's assessment. The section also establishes the date by which the comptroller will send insurers notification of the amount of their assessment and the due date for payment of the assessment.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law. This rule also affects Insurance Code, Chapter 5, Article 5.102.

The new rule implements Insurance Code, Chapter 5, Article 5.102.

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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PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.2, 190.3, 190.5, 190.8

The Texas Bond Review Board adopts amendments to §§190.2, 190.3, 190.5, 190.8, concerning allocation of private activity bonds, with changes to the proposed text as published in the July 5, 2002, issue of the *Texas Register*(27 TexReg 5946). Generally, the amendments will allow more applications to receive a reservation and clarify procedures that are already in place.

Comments were received from: Texas Department of Housing and Community Affairs; Austin Housing Finance Corporation; McCall, Parkhurst & Horton, L.L.P,; Vinson & Elkins, L.L.P.; Texas Association of Local Housing Finance Agencies; Trammell Crow Residential; Texas Affiliation of Affordable Housing Providers. Comments suggested less emphasis on specific counsel and/or entities and leniency in application language to accommodate requests made by cities, counties and other local jurisdictions related to project and land restrictions/specifications. The agency agreed with the changes in order to allow more flexibility and enable potential applicants to avoid higher consultant fees and encourage access to the program.

The amendments are adopted with changes under Chapter 1372, Government Code, as amended, which give the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Chapter 1372, Government Code is affected by these adopted amendments.

§190.2. Allocation and Reservation System.

(a) The state's ceiling shall be determined for each calendar year by the executive director based upon the most recent census estimate of the resident population of the state published by the Bureau of the Census prior to the beginning of such calendar year. The amount of the state ceiling shall be published in the Texas Register in the first January issue of each year.

(b) On or after October 10 of the year preceding the applicable program year, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 2 of the program year. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in §1372.022, the board shall conduct a lottery establishing the priority order of each such application for reservation. Once the priority order for all applications for reservation filed on or before October 20 of the year preceding the applicable program year is established, reservations for each issuer within the categories described in §1372.022 (b)(2), (3), and (6), shall be granted in the order of priority established by such lottery. If more than 10 applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers. Each issuer of state voted issues granted a reservation initially may participate in the additional lottery or shall be granted a reservation date which is the first business day of the program year.

(c) The order of priority for reservations by housing finance corporations in the category described in §1372.022(b)(1), Government Code, shall further be determined as provided in §1372.032.

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year. Any such priority of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring government unit and that unit's population base if the dollar amount of the application has not increased.

(2) The second category of priority shall include those applications for a reservation not included in the first category of priority.

(3) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. The most recent closing applicable to:

(A) a newly created housing finance corporation that was created by a local government unit or local government units that had previously sponsored an existing housing finance corporation or a disbanded housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation;

(B) a housing finance corporation sponsored by a local government unit that has participated in the program of another housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation; and

(C) all other housing finance corporations, is the most recent closing of qualified mortgage bonds by the housing finance corporation. In no event will a housing finance corporation or its sponsoring local government unit be allowed to achieve an advantage in the determination of its last closing date by creating, dissolving, or withdrawing from a housing finance corporation.

(d) The order of priority for reservations in the category described in §1372.022, (b)(4) shall further be determined as provided in §1372.0321.

(1) The first category of priority shall include those applications for a reservation for:

(A) projects in which the maximum allowable rents are restricted to 30% of 50% area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units; and

(B) on June 1 and after, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family income levels below or at the median family income for the state according to the U.S. Department of Housing and Urban Development.

(2) The second category of priority shall include those applications for a reservation for a project in which the maximum allowable rents are restricted to 30% of 60% area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units.

(3) The third category of priority shall include those applications for any other qualified residential rental project.

(4) Within each category of priority, reservations shall be granted in the order established by the lottery subject to §1372.0231. In applying §1372.0231, the board shall grant a reservation to a project located outside a Qualified Census Tract if granting the said reservation to a project, with a lower lot number, located within a Qualified Census Tract would exceed the 50 percent limitation. In such event the proposed project with the lower lot number located within a Qualified Census Tract remains in line on the waiting list.

(5) Owners of Low Income Housing Tax Credits (LIHTC) and 501(c)(3) properties that issue through State agencies are prohibited from having policies, procedures and/or screening practices which have the effect of excluding applicants because they have Section 8 voucher or certificate. The verification of such an exclusionary practice on the part of the owner or manager by a state agency will be considered a violation and may result in the owner's inability to participate in future housing programs of the state.

(e) The order of priority for reservations in the category described in §1372.022(b)(5), shall further be determined as provided in §1372.033, Government Code. Reservations shall be granted in reverse calendar year order of the most recent closing of qualified student loan bonds by each issuer of qualified student loan bonds authorized by §53.47, Education Code, with the most recent closing being the last to receive a reservation and with those issuers that have never received a reservation for student loan bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot.

(f) If state ceiling becomes available on August 15, it shall be available prior to September 1 for qualified residential rental project issues in the order of priority described in subsection (d) of this section without regard to the provisions of §1372.0231.

(g) If any issuer which was subject to the lottery conducted as described in subsection (b) of this section does not, prior to September 1 of the program year, receive the amount requested by such issuer in its application for reservation filed on or before October 20 of the preceding year, and if state ceiling becomes available on or after September 1 of the program year, such issuer, subject to the provisions of §1372.037, Government Code, shall receive a reservation for any state ceiling becoming available on or after September 1 of the program year, in the order of priority established by such lottery, without regard to the provisions of §§1372.032, 1372.0321, and 1372.033, Government Code.

(h) All applications for a reservation filed after October 20 of the preceding year by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

(i) An application for a reservation for the current program year may not be submitted and a reservation may not be granted after December 1 of the program year.

(j) An issuer may refuse to accept a reservation for any amount if the reservation is granted after September 23 of the program year.

(k) The amount of the state's ceiling that has not been reserved prior to December 1 of the program year and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation. If the 120-day or 180-day period, as applicable, expires on or after December 24th of a program year in which a reservation was issued, an issuer is required to close on its bonds before December 24th. However, if an issuer's applicable period expires after December 31st, the issuer may elect to notify the board in writing before December 24th of their intent to carry forward the reservation and their expected bond closing date. The granting by the board of a carryforward designation through this described process, will allow an issuer the remaining balance of their 120- or 180-day period as applicable to close on their bond by the expected closing date. If any issuer makes this election and does not close the bonds on or before the expected closing date, the amount of carryforward designation will be administered by the board in compliance with the requirements of the code.

(l) An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(m) Issuers will be eligible for carryforward according to the priority classifications listed in the Act, specifically §1372.062.

§190.3. Filing Requirements for Applications for Reservation.

(a) Form. Applications must be filed on forms prescribed by the board and must contain all information and documentation required under the Act and this chapter, as applicable.

(b) Application Filing. The issuer shall submit one original and one copy of the application for reservation. Each application must be accompanied by the following:

(1) the application fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, certified by an officer of the issuer; or a copy of the certified resolution of the issuer authorizing the filing of the application for reservation, in either case certified with an original signature by an officer of the issuer;

(4) a copy of the issuer's articles of incorporation as certified by the secretary of state of Texas and by-laws, including amendments thereto and restatements thereof, or alternatively, a certification with an original signature by an authorized representative of the issuer that there have been no amendments to the articles of incorporation or by-laws since the last submission of these items to the board;

(5) a copy of the issuer's certificate of continued existence from the secretary of state of Texas dated within 30 days of submission of application, an issuer's certificate of good standing is not an acceptable substitution for this requirement;

(6) a copy of the borrower's and, if the borrower is a partnership, each partner's certificate of good standing from the comptroller of public accounts of Texas, dated within 30 days of submission of application;

(7) a statement by the issuer, other than an issuer of a state-voted issue or the Texas Department of Housing and Community Affairs (TDHCA) or the Texas Agricultural Finance Authority (TAFA, that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, or based on the issuer's population;

(8) if unexpended proceeds exist, including transferred proceeds representing unexpended proceeds, from a prior issue or issues of bonds, other than a state-voted issue or an issue by the TDHCA or TAFA, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer of the prior issue of bonds shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(9) if unexpended proceeds, including transferred proceeds representing unexpended proceeds, other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by TDHCA, or TAFA, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds by the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided that any extension provision may be amended, prior to the date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, issuers of qualified student loan bonds authorized by §53.47, Education Code, may satisfy the requirements of §1372.028(c)(3)(F) by, in lieu of a definite and binding agreement, providing with the application evidence as certified by the issuer that the issuer has purchased, in each of the last three calendar years, qualified student loans in amounts greater than or equal to the amount of the unexpended proceeds;

(10) if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the TDHCA, or TAFA, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (9) of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(11) a written opinion of legal counsel, addressed to the board, stating the bonds are required to be included under the state ceiling and that the issuer is legally authorized to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

(12) a qualified mortgage bond issuer that submits an application for reservation as described in §1372.032, Government Code, shall provide a statement certifying to the most recent closing of qualified mortgage bonds determined as provided in §190.2(c)(3) of this title, and the most recent date of a reservation received for mortgage revenue bonds and state the government unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation; and for said issuers who have received an allocation of volume cap for the purposes of issuing qualified mortgage bonds within the six years prior to the date of application, a statement on the form prescribed by the Board as to the utilization percentage relating to its most recent allocation calculated in accordance with §1372.0261;

(13) For a qualified residential rental project issue, an issuer shall provide a copy of an executed earnest money contract between the borrower and the seller of the project. This earnest money contract must be in effect at the time of submission of the application to the board and expire no earlier than December 1 of the year preceding the applicable program year. The earnest money contract must stipulate and provide for the borrower's option to extend the contract expiration date through March 1 of the program year, subject only to the seller's receipt of additional earnest money or extension fees, so that the borrower will have site control at the time a reservation is granted. If the borrower owns the property, evidence of ownership must be provided. For subsequent reservations granted after March 1 and throughout the remainder of the program year, the borrower must provide within the close of three business days following the notification of pending reservation:

(A) if applicable, proof of application for Low Income Housing Tax Credits with TDHCA, and

(B) a copy of an earnest money contract that is in full force and effect. For those reservations granted on August 15 or, if not falling on a business day the next business day thereafter, the borrower will have until the close of the fifth business day after receipt of the reservation to provide the earnest money contract or the reservation will automatically expire.

(14) The borrower must be specified in the application for reservation of allocation. The borrower may be identified as a to-be-formed entity only if the application for reservation of allocation specifies a related entity or an entity that will be a component of the to-be-formed entity as borrower.

(15) For qualified residential rental project issues where the borrower is an entity or to-be-formed entity that is designated or intends to seek abatement from ad valorem taxation, that intent to seek abatement must be specified on the application for reservation of allocation.

(c) Bond authorization requirements. Not later than 35 calendar days after an issue's reservation date, the board or Comptroller of Public Accounts, as applicable, must be in receipt of the following from the issuer:

(1) one-third of the closing fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a certificate signed by the issuer that certifies the principal amount of the bonds to be issued or the portion of the state ceiling that will be converted to mortgage credit certificates;

(4) a list of finance team members with their addresses and telephone numbers;

(5) if applicable, an amended agreement pursuant to subsection (b)(9) of this section;

(6) a bond authorization requirements checklist, on the form prescribed by the board.

(7) if the borrower was originally identified as a to-be-formed entity, the final formation of the borrower must be identified as part of the submission and must meet the specifications set forth in the application for reservation of allocation. No changes will be permitted in the general partner of the borrower after the 35th day after the date of reservation.

(d) Closing fee. The remaining two-thirds of the fee must be paid simultaneously with closing on the bonds. The board shall be in receipt of the fee from the issuer as confirmed by the Comptroller of Public Accounts not later than the fifth business day after the day on which the bonds are closed.

(e) Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

(1) a certificate regarding fees, on the form prescribed by the board;

(2) a closing documents checklist, on the form prescribed by the board;

(3) a certificate of delivery on the form prescribed by the board;

(4) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(5) if one is required, a copy of the approval of the local government unit or local government units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the Code does not require such a public hearing and approval of a local government unit or local government units;

(6) the document evidencing compliance with §1372.040, Government Code;

(7) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule;

(D) purchaser or purchasers; and

(8) an official statement.

(9) For mortgage credit certificates the issuer shall file item (1) of subsection (e) and the following:

(A) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(B) issuer's mortgage credit certificate election; and

(C) program plan.

(10) For a residential rental project described in §§190.2(d)(1) or (d)(2), evidence from the Texas Department of Housing and Community affairs that an award of Low Income Housing Tax Credits has been approved for the project.

(f) Additional information. The board may require additional information at any time before granting a certificate of reservation or certificate of allocation.

(g) Application restrictions.

(1) In order to submit an application for reservation prior to October 21 of the year immediately preceding the program year an issuer or borrower must have been in existence on October 1 of that year.

(2) Project substitutions will not be allowed after the application for reservation has been delivered to the board. Alterations to the project, including changes to unit size, number of total units and unit mix, as well as changes to the land size necessitated as part of the development or finance approval process in the case of residential rental projects will be permitted only if said changes:

(A) are agreed to by the issuer, and;

(B) do not include the addition of land that is the subject of another application in the current program year.

(3) No issuer may submit an application for reservation for the same or substantially the same project or projects as are contained in the application of another issuer.

(4) For any one project, no issuer, prior to September 1 of the program year, may exceed the following maximum application limits:

(A) $25,000,000 for issuers described by §1372.022 (a)(1) other than the Texas Department of Housing and Community Affairs;

(B) $50 million for issuers described by §1372.022(a)(2) other than the Texas Higher Education Coordinating Board or $75 million for the Texas Higher Education Coordinating Board;

(C) an amount as limited by the code for issuers described by §1372.022 (a)(3);

(D) the lesser of $15 million or 15 percent of the amount set aside for this purpose for issuers described by §1372.022(a)(4);

(E) $35 million for issuers described by §1372.022 (a)(5) and §1372.033 Notwithstanding the cap limit described in §1372.037(5), each issuer that has requested and has been offered a reservation in the maximum amount shall be granted in equal amounts any remaining state ceiling set aside for qualified student loan issuers. This will be based on the acceptance by an issuer of a reservation and that an issuer does not refuse any additional reservation. The disbursement of equal shares will be granted in conjunction, subject to availability and acceptance, with the original request

(F) $25 million for issuers described by §1372.022 (a)(6).

(5) The board may not accept applications for more than one project located at, or related to, a business operation at a particular site for any one program year.

(6) For a qualified residential rental project issue, the Residential Rental Attachment contained in the Application packet for Reservation of Allocation must correctly reflect the regional

designation of the project's location at the time of the lottery. If it is found to be incorrect on or after the lottery date, the project will be placed at the end of the lottery list once the region designation error is detected and corrected.

(7) For a qualified residential rental project, an applicant may not ever amend the priority status of the project once the application for reservation of allocation has been submitted to the Board.

(8) Qualified residential rental projects submitted post-lottery will be placed after all qualified residential rental projects submitted prior to the lottery, regardless of priority designation.

§190.5. Consideration of Qualified Applications by the Board.

(a) All fees required by the Act and the rules must be submitted under separate cover by overnight delivery or messenger to the lockbox address as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions). Each check must be accompanied by a fee verification form as prescribed by the board. The Comptroller of Public Accounts shall note the receipt of the check on the fee verification form and forward the form to the board. If the fee is not received in a timely manner, the corresponding filing will not be considered to be a complete filing, and with respect to a filing pursuant to §190.3(a) or (c) of this title (relating to Filing Requirements for Applications for Reservation), the reservation will be cancelled.

(b) All other submissions required by the Act must be delivered in person to the board at its offices during normal business hours or sent by overnight delivery, certified or registered mail, postage prepaid, addressed to the board. The board shall note on the face of the documents the date and time that they are received and provide, upon issuer request, the issuer with a receipt describing the document received and the date and time of receipt. The board will review the application to determine if it is complete. The board shall return any application not in substantial compliance with the Act and these sections.

(c) The board shall stamp or otherwise designate the date and time on which it receives each qualified application. The application shall not be considered complete, and shall not be stamped and accepted for filing, unless and until each of the items required under this section has been received by the board.

(d) The board shall give its certificate of reservation approving the reservation requested by the issuer within five business days after the board receives the qualified application, to the extent that amounts in the state ceiling remain available for certificates of reservation.

(e) If at any time the amount of the state ceiling or portion of the state ceiling reserved for qualified mortgage bonds, state voted issues, qualified small issue bonds, qualified residential rental project issues, qualified student loan bonds, or all other bond issues has been exhausted, applications which would otherwise qualify for a reservation shall be received and dated and become eligible for reservations as provided in subsection (f) of this section.

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 of the program year because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 of the program year to qualified applications in an order determined by priority and by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. If any portion of state ceiling becomes available after June 1 of the program year and before August 15 of the program year in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 15 of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. The board may grant a reservation at any time on or after January 2 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant.

(g) A reservation that is received by an issuer of qualified mortgage bonds for only a portion of the amount requested in the application for reservation shall be considered a reservation for the program year regardless of the amount reserved, and if an application for a reservation is submitted for the following program year by such issuer, as described in §1372.032, Government Code, the category of priority will be determined in accordance with §1372.032(a), Government Code and the order determined by §1372.032 (c), Government Code.

(h) If any change in a qualified application or in any of the items accompanying the application should occur prior to the date state ceiling becomes available to an issuer, the issuer or authorized representative shall promptly notify the board of any such change. Upon state ceiling becoming available, an issuer or authorized representative, within three days upon receipt of notice from the board that a portion of the state ceiling will be available to the issuer, must confirm and certify that the information contained in the qualified application and all items accompanying the application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application), which amendment will constitute such certification. Prior to receiving a reservation, only an issuer may amend the application to change the amount of the state ceiling requested, but the board may not accept an amendment to increase the amount of the state ceiling requested unless at the time of the amendment seeking an increase in the amount of state ceiling there are no other qualified applications pending, subsequent in order to said application, for which state ceiling is not available. A reservation date will not be given by the board until the receipt of such certification.

(i) Upon notice by the board that a portion of the state ceiling will be available to the issuer for less than the requested amount, the issuer or authorized representative must confirm in writing its acceptance or denial of the amount available, within three business days. Refusal by an issuer to accept a certificate of reservation for less than the amount requested in a qualified application shall not change the chronological order in which such issuer will be offered a certificate of reservation. If an issuer accepts a certificate of reservation for less than the requested amount, the issuer shall maintain its current position, and will be offered the next available reservation amounts until the original request has been satisfied. However, the deadline restrictions will be calculated from the date of reservation for each reservation amount.

§190.8. Notices, filings, and Submissions.

(a) Certificates of reservation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, in any case at the expense of the borrower or issuer and shall be deemed to have been given when received by the courier or delivery service. Other notices and written communications from the board shall be deemed to have been given when sent via electronic mail.

(b) Applications, notices, and other written communication to, and filings with the board, should be addressed or delivered to the Bond Review Board, William P. Clements State Office building, 300 West 15th Street, Suite 409, Austin, Texas 78701.

(c) Fees must be made payable to the Texas Bond Review Board.

(d) Fees should be sent by overnight delivery and addressed as follows: Comptroller of Public Accounts Item Processing - Lockbox Section 200 E. 10th St. Austin, Texas 78701

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 September 6, 2002.

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James T. Buie
Executive Director
Texas Bond Review Board
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For further information, please call: (512) 463-9890

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PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §301.5

The State Board of Trustees for the Texas Statewide Emergency Services Personnel Retirement Fund adopts an amendment to 34 Texas Administrative Code §301.5(a)(4), concerning the Rules of the Texas Statewide Emergency Services Personnel Retirement Fund, without changes to the proposed rule as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6237) and will not be republished.

This amendment is adopted in order to clarify the method for calculating the penalty for late payments.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6243e.3, which provide the Office of the Fire Fighters' Pension Commissioner with the authority to promulgate rules necessary for the administration of the pension fund.

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 September 4, 2002.

TRD-200205822
Morris E. Sandefer
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: September 24, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 936-3372

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.87

The Texas Youth Commission (TYC) adopts new §87.87, concerning Sex Offender Risk Assessment, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register*, (27 TexReg 6818).

The justification for the new rule is to comply with Chapter 62 of the Texas Code of Criminal Procedure, regarding the assignment of risk level for sex offenders who are in the custody of the Texas Youth Commission (TYC).

The new rule will determine the risk level for sexual re-offending among registered sex offenders in the custody of TYC.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.0813 Sex Offender Counseling and Treatment, which provides the Texas Youth Commission with the authority to provides counseling and specific release conditions for juvenile sex offenders.

The adopted rule implements the Human Resource Code, §61.034.

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 September 3, 2002.

TRD-200205781
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 23, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (TYC) adopts an amendment to §95.21, concerning Aggression Management Program, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register*, (27 TexReg 6820).

The justification for amending the section is to clarify the eligibility criteria for youth to be placed in the aggression management program

The amendment will provide greater accountability for youth and strict enforcement of due process for youth.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission (TYC) with the authority to provide treatment and discipline appropriate for the youth committed to the care of TYC.

The adopted rule implements the Human Resource Code, §61.034.

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 September 3, 2002.

TRD-200205782
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 23, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 424-6301

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CHAPTER 99. GENERAL PROVISIONS SUBCHAPTER A. YOUTH RECORDS

37 TAC §99.9

The Texas Youth Commission (TYC) adopts an amendment to §99.9, concerning Access to Youth Records, with changes to the proposed text as published in the August 2, 2002 issue of the *Texas Register*, (27 TexReg 6822). Changes to the proposed text consist of minor grammatical changes.

The justification for amending the section is to comply with the Human Resource Code.

The amendment will clarify that a prosecuting attorney may obtain a copy of a youth's adjudication not only for a felony grade offense, but for a misdemeanor offense punishable by confinement in jail as well.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to release adjudication records to prosecuting attorneys as applicable.

The adopted rule implements the Human Resource Code, §61.034.

§99.9. Access to Youth Records.

(a) Purpose. The purpose of this rule is to establish controls on access to Texas Youth Commission (TYC) youth records in compliance with state and federal laws and regulations which limit access to all youth records.

(b) Files or records on individual youth will be open to inspection only by those given access under Texas Family Code, Title 3 and Federal Rule 42 CFR Part 2 as interpreted by TYC.

(c) Youth files shall be marked "confidential" and kept in locked facilities.

(d) Access to youth records which contain certain information identifying the youth as chemically dependent or as a substance abuser shall be limited in accordance with (GAP) §99.1 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse) and Federal Rule 42 CFR Part 2. Confidentiality requirements of such information are more restrictive than requirements set forth in other regulations. Without appropriate release forms, information regarding alcohol and drug abuse released under any section of this policy/section shall be deleted prior to release. See (GAP) §99.1 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse) for additional information.

(e) A prosecuting attorney may obtain a copy of a youth's adjudication for a misdemeanor punishable by confinement in jail, or a felony-grade offense pursuant to the Human Resources Code §61.095. Requests under this paragraph must be directed to the custodian of records.

(f) With the exception of school transcripts, GED scores, and medical records under limited conditions, a youth shall have no right of access to any confidential files, even on becoming an adult. Likewise, a youth shall have no authority to grant access to another party.

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 September 3, 2002.

TRD-200205783
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 23, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 424-6301

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.1

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.1, concerning the duties of the presiding officer and the policy board. The revised rule is adopted without changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4923). The text of the rule will not be republished.

The amendments are adopted to clarify the statutory authority of the presiding officer to act as administrative head of the Policy Board and the Board, and to delegate administrative matters, as necessary, to the Policy Board.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.035 and §508.036, Government Code, which specify the duties of the presiding officer and the policy board.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205873
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.60, §141.61

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter C, §141.60, concerning the submission and presentation of information and §141.61, concerning representation of an inmate. Section 141.60 is adopted with changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4923). Section 141.61 is adopted without changes to the proposed text and will not be republished. One non-substantive change was made in §141.60(a), (b), and (c), the current language "for and on behalf" was deleted and the language, "in support" was substituted.

The amendments are adopted to clarify the presiding officer's statutory authority to act as administrative head of the Policy Board and the Board, and to conform the language of the rules to that of current board practice.

No comments were received regarding the proposed amendments.

The amendments are adopted under §508.044, Government Code, which provides for the power of board members to make decision on which inmates are released on parole or mandatory supervision, and §508.036 and §508.082, Government Code, which provides the Policy Board with authority to adopt rules relating to the decision-making processes used by the board and board and parole panels and for the submission and presentation of information and arguments to the board.

§141.60. Submission and Presentation of Information.

(a) Unless otherwise provided, information and arguments in support of an offender shall be in writing.

(b) Unless otherwise provided, all information and arguments in support of an offender's release shall be submitted to the Review and Release Processing Section-TDCJ, Austin, Texas.

(c) In the event that an offender's case is in the review period, copies of all information and arguments in support of an offender's release may be submitted to members of the parole panel designated to consider the case. For this purpose, review period shall mean a period greater than two months but less than six months prior to the month of the next scheduled review.

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 September 6, 2002.

TRD-200205874
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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CHAPTER 145. PAROLE
SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.12, 145.13, 145.20

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.12, concerning action upon review; §145.13, concerning action upon review of felony consecutive sentences; and §145.20, concerning parole certificates. The Policy Board adopts §145.12 and §145.13 with changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4924). The Policy Board adopts §145.20 without changes and the text of the rule will not be republished.

The Board adopts amendments to these sections to conform the language of the rules to that of current board practice and to institute a new voting option for the consecutive felony sentencing review process. Prior to adoption, the Policy Board voted to revise §145.12, paragraph (4)(H) to conform the language of the FI-18R voting option to that of like voting options in other sections; and in §145.13, subsection (c)(4), to replace "24 months" with "36 months."

No comments were received regarding the proposed amendments.

The amendments are adopted under §508.036 and §508.044, Government Code, which authorizes the policy board to adopt rules relating to the decision making processes used by the Board and parole panels and to determine which offenders are to be released to parole or mandatory supervision; §508.150, relating to consecutive felony sentences; and §508.154, relating to an offender's contract upon release.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review docket date (Month/Year) may be set at any date in the three-year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed;

(3) deny parole and order serve-all, but in no event shall this be utilized if the offender's minimum expiration date is over three years from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed;

(A) FI-1--Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date within the three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than three months from specified date. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRSAP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(D) FI-4 (Month/Year)--Transfer to Pre-Parole Transfer facility prior to presumptive parole date set by a board panel and release to parole supervision on presumptive parole date, but in no event shall the specified date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed;

(E) FI-5--Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(G) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than nine months from specified date. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(H) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program.

§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.

(a) This section applies only to an offender sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

(1) defer for request and receipt of further information;

(2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed.

(3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set for review on a future specific month and year (set-off). The next review docket date (Month/Year) may be set at any date in the three-year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed; or

(4) vote CU/SA (Month/Year-Cause Number): Deny release; an offender is within 36 months of their maximum expiration date.

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed in accordance with §145.12 of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

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 September 6, 2002.

TRD-200205875
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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37 TAC §145.15

The Policy Board of the Texas Board of Pardons and Paroles adopts new 37 TAC §145.15, concerning board action upon review and extraordinary votes. The new rule is adopted with changes in response to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4925).

The new rule is adopted as an addition to Chapter 145, Parole. The purpose of the new rule is to incorporate voting options used by the board members for extraordinary voting into the text of the

rules and to conform the rule's terminology to that of other board rules. The Policy Board adopted an amendment to subsection (a)(2)(B) to replace "upon successful" with "only after program" and to delete "of the program"; they also adopted a change in that subsection regarding the maximum amount of time a specified date can be set from two years to three years. The Policy Board also voted to replace 24 months with 36 months as a time frame for various voting options within §145.15.

No comments were received regarding adoption of the new rule.

These amendments are adopted under §§508.036, 508.044 and 508.046, Government Code. The Board interprets §508.036 and §508.044 as relating to the Policy Board's duty to adopt rules as it considers proper or necessary concerning the decision-making processes used by the Board and parole panels. The board interprets §508.046 as relating to the requirement for certain offenders to receive a two-thirds majority vote to be granted parole.

§145.15. Action Upon Review; Extraordinary Vote.

(a) This section applies to any offender convicted of a capital offense under §21.11(a)(1) or §22.021, Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) FI-1: Release the offender when eligible; or

(B) FI-18R (Month/Year): Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year): Deny release and set the next date for review in 36 months; or

(B) SA: The offender's minimum expiration date is less than 36 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number): A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number): Deny release and set the next date for review 36 months from either the prior docket date or the date of the panel decision if the prior parole docket date has passed; or

(3) CU/SA (Month/Year-Cause Number): Deny release; an offender is within 36 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the mandatory release date, the voting options are the same as those listed in subsections (a) and (b) in this section. Once an offender reaches the mandatory supervision serve all (SA) date, a three-member parole panel will consider the offender for release to mandatory supervision using the following options:

(1) RMS: Release to mandatory supervision when TDCJ determines that the prisoner has reached a mandatory supervision date; or

(2) DMS (Month/Year): The next date for mandatory supervision review shall be set one year from either the prior docket date or the date of the panel decision if the prior parole docket date has passed.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS: The board shall vote FI-1 and impose special condition "O"-"The offender shall comply with the terms and conditions of the MRIS program and abide by a TCOMI-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS.

(B) Deny MRIS: The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(a) - (d) of this title (relating to Action upon Special Review of Information Not Previously Available-Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The chair shall determine which board office will begin the voting. Voting options are the same as those in subsections (a) - (c) 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 September 6, 2002.

TRD-200205876
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.26

The Policy Board of the Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §145.26, concerning annual report status. The repeal is adopted without change to the proposal as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4926). The text of the rule will not be republished.

The section is repealed to delete obsolete requirements and bring the rules into compliance with current board practice.

No comments were received regarding the repeal of the rule.

The repeal of this rule is adopted under §508.036 and §508.044, Government Code, which relate to the Policy Board's authority to adopt rules as it considers proper or necessary concerning the decision-making processes used by parole panels.

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 September 6, 2002.

TRD-200205877
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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CHAPTER 149. MANDATORY SUPERVISION

SUBCHAPTER A. RULES AND CONDITIONS OF MANDATORY SUPERVISION

37 TAC §149.1, §149.3

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §149.1 and §149.3, concerning the rules and conditions of mandatory supervision and the supervision of Texas offenders in other states. The Policy Board adopts §149.1 and §149.3 with changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4927).

The amendments are adopted to clarify the Board's authority under law to make mandatory supervision decisions and to update the language and bring the sections into compliance with current board practice. Prior to adoption, the Policy Board voted to revise the proposed text for §149.1 to delete the words "parole or" from subsection (a) and add subsection (b) to read: "The parole panel shall not impose as a condition for release to mandatory supervision that the offender be released only to a state other than the State of Texas."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036 and §508.044, Government Code, which authorize the Policy Board to adopt reasonable rules relating to the decision-making processes used by parole panels; §508.147, Government Code, which authorizes parole panels to determine the conditions of release to mandatory supervision; and §508.181, relating to offenders' residence upon release.

§149.1. Conditions and Rules of Mandatory Supervision.

(a) Every offender being released on mandatory supervision shall be issued a written statement listing the conditions and rules of mandatory supervision in clear and intelligible language; and, upon release to mandatory supervision, all conditions of release to mandatory supervision that the parole panel is required by law to impose as a condition of release to mandatory supervision are imposed. The offender may have additional conditions imposed by a parole panel after release, and shall be notified in writing of any such conditions. Continuance on mandatory supervision is conditioned upon full compliance with all conditions and rules of mandatory supervision as imposed by the parole panel.

(b) The parole panel shall not impose as a condition for release to mandatory supervision that the offender be released only to a state other than the State of Texas.

§149.3. Texas Mandatory Supervision Offenders Supervised in Other States.

Texas mandatory supervision offenders accepted for supervision in other states under the terms of the Interstate Parole Compact (Texas Code of Criminal Procedure, Article 42.11) shall adhere to the conditions and rules of supervision for Texas and the receiving state.

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

Filed with the Office of the Secretary of State on September 6, 2002.

TRD-200205878
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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37 TAC §149.2, §149.5

The Policy Board of the Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §149.2 and §149.5 concerning restitution and annual report status. The repeals are adopted without change to the proposal as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4927). The text of the rules will not be republished.

These sections are repealed to delete obsolete requirements within the rules and conditions of mandatory supervision and to bring the rules into compliance with current board practice.

No comments were received regarding the repeal of these rules.

The repeals are adopted under §508.036, and §508.044, Government Code, which relate to the Policy Board's power to adopt rules as it considers proper or necessary concerning the decision-making processes used by parole panels.

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 September 6, 2002.

TRD-200205879
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER B. SELECTION FOR MANDATORY SUPERVISION

37 TAC §149.16

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §149.16, concerning the rules and conditions of mandatory supervision. The amended rule is adopted without changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4928). The text of the rule will not be republished.

The amendments are proposed to clarify the Board's authority under law to make mandatory supervision decisions and to update the language and bring the section into compliance with current board practice.

No comments were received regarding adoption of the amendments.

The amended rule is adopted under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the Board and parole panels; and §508.149, relating to offenders ineligible for mandatory supervision.

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 September 6, 2002.

TRD-200205880
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 26, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 406-5458

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 62 continues to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499.

TRD-200205901
Cristina De La Fuente-Valadez
Manger, Policy Planning
Texas Education Agency
Filed: September 9, 2002

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 161, Commissioner's Rules Concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 161 continues to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499.

TRD-200205902
Cristina De La Fuente-Valadez
Manger, Policy Planning
Texas Education Agency
Filed: September 9, 2002

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. This review of Chapter 113 is proposed in accordance with Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a), which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 113 is currently divided into four subchapters, A - D. Subchapter A, concerning Definitions, contains the definitions pertinent to rules contained within Chapter 113 only. Subchapter B, concerning National Emission Standards for Hazardous Air Pollutants (NESHAPS), contains state adopted rules which incorporate some of the federal NESHAPS as promulgated by the United States Environmental Protection Agency (EPA) in Title 40 Code of Federal Regulations (CFR), Part 61 (40 CFR Part 61). Subchapter C, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, contains state adopted rules which incorporate the federal NESHAPS as promulgated in 40 CFR Part 63. The NESHAPS in 40 CFR Part 63 incorporate the maximum available control technology (MACT) standards as defined for each of the affected source categories, and are also referred to as MACT standards. Subchapter D, concerning Designated Facilities and Pollutants, contains state adopted rules applicable to existing sources which are adopted as emissions guidelines in accordance with Federal Clean Air Act (FCAA), §111(d). These emissions guidelines are promulgated in 40 CFR Part 60.

The commission has proposed to add a new Subchapter E, Consolidated Federal Air Rules (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI) {FCAA, §112, 40 CFR PART 65}, which was published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3937), Rule Log Number 2002-036b-113-AI. In new Subchapter E, the commission proposes to adopt by reference, without any revisions, all six EPA requirements in 40 CFR Part 65 - *Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry* (SOCMI). In promulgating the CAR regulations, the EPA consolidated major portions of several new source performance standards and NESHAPs applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The promulgated rule pulled together applicable federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The CAR is an optional compliance alternative for a SOCMI source.

The commission is also separately proposing amendments and additions to NESHAP provisions in Chapter 113, Subchapter C (See Rule Log Number 2002-036a-113-AI). The proposed amendments incorporate changes that the EPA has made to 40 CFR Part 63 by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. In addition, new sections are proposed that will adopt by reference subparts which are contained in 40 CFR Part 63 that have not been previously incorporated into Chapter 113.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 113 continue to exist. The rules are needed to control air pollution from designated pollutants and facilities, as well as toxic materials throughout the State of Texas, by providing a format for the commission to adopt the federal stationary source performance standards and hazardous air pollutant standards as they are promulgated by EPA in 40 CFR Parts 60, 61, 63 and 65. By adopting the federal standards, the commission may then request delegation for the state administration of these programs.

PUBLIC COMMENT

The commission invites public comment on whether the reasons for the rules in Chapter 113 continue to exist. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-019-113-AI. Comments must be received in writing by 5:00 p.m., October 21, 2002. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, at (512) 239-1873.

TRD-200205885
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 9, 2002

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Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this notice of intention to review Title 34, Part 3, Texas Administrative Code, Chapter 21 (Purpose and Scope), Chapter 23 (Administrative Procedures), Chapter 33 (Legal Competence), Chapter 35 (Correction of Error), Chapter 39 (Proof of Age), Chapter 45 (Franchise Tax), and Chapter 51 (General Administration). This review and consideration is in accordance with Government Code, §2001.39, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11.

In accordance with the agency rule review plan filed with the Secretary of State on December 20, 2001, the Policy Committee of the Board of Trustees has conducted an initial review of Title 34, Part 3, Texas Administrative Code, Chapters 21, 23, 33, 35, 39, 45, and 51. The review was conducted in an open meeting and included an assessment of whether the reason for adopting the rules continues to exist. Now that the initial review is completed by the Policy Committee, the full Board will review these Chapters to make a determination as to whether the reasons for adopting or readopting these rules continue to exist. The final review of these Chapters is anticipated to be completed at the Board meeting scheduled for December 19-20, 2002.

As part of this review process, TRS is proposing amendments to Chapters 21, 23, 33, 35, 39 and 51, as well as the addition of sections to Chapters 33, 35 and 51. In addition, TRS is proposing repeals of some sections in Chapters 23, 45, and 51. The amendments, new sections and repeals are published elsewhere in this issue of the *Texas Register*.

TRS will accept comments on the requirement as to whether the reasons for adopting these sections continue to exist in the comments filed on the proposed amendments, new sections and repeals.

All comments should be directed to Charles L. Dunlap, Executive Director Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698.

TRD-200205890
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: September 9, 2002

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Adopted Rule Reviews

Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board readopts the following rules comprising Chapters 271 and 272, Title 22, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting these rules continue to exist:

§271.1. Definitions.

§271.2. Applications.

§271.3. Jurisprudence Examination Administration.

§271.5. Licensure Without Examination.

§271.6. National Board Examination.

§272.1. Open Records.

§272.2. Historically Underutilized Businesses.

§272.3. Bid and Purchasing Protest Procedures.

The notice of rule review was published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5561).

No comments were received.

The rule review was conducted pursuant to Texas Gov't Code §2001.039.

As part of the rule review process, The Texas Optometry Board is adopting amendments to §§271.1, 271.2, and 271.6, to correct citations to the Texas Optometry Act as codified in the Texas Occ. Code. The agency is also adopting amendments to §271.6 to include changes to the Texas Optometry Act. These adopted amendments will be filed separately in the *Texas Register*.

TRD-200205854
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: September 6, 2002

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Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission readopts Chapter 303, General Provisions, with changes to §303.4 and §303.9 and without changes to

§§303.35, 303.38, 303.82, 303.84-303.85. The Commission adopts the repeal of §303.91 due to its redundancy. The review was conducted in accordance with Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General §2001.039, as added by Chapter 1499, Acts of the 76th Legislature, 1999, §1.11(a).

The proposed rule review was published in the July 12, 2002 issue of the *Texas Register*. No comments were received concerning the readoption of these sections. The Commission has reviewed these sections, and determined that, with the exception of §303.91, the reasons for adopting the sections continues to exist.

TRD-200205824
Judith L. Kennison
General Counsel
Texas Racing Commission
Filed: September 4, 2002

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are 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: 25 TAC §1.91(b)(1)

Schedule of Fees for
Clinical Health Services

Poverty Income	Family Size	Charge/ Visit	Maximum Charge/Family
0-99%	1-8	$00.00	$00.00
100-199%	1-8	$ 5.00	$10.00
200-299%	1-8	$10.00	$30.00
300% +	1-8	$30.00	No Maximum

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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of Texas Solid Waste Disposal Act Claim

Notice is hereby given by the State of Texas of the following proposed resolution of a claim for injunctive relief, civil penalties, and attorney's fees under the Texas Solid Waste Disposal Act. The State of Texas, on behalf of the Texas Natural Resource Conservation Commission, has reached an agreement with Wright Oil Company to resolve Wright Oil's liability to the State for violation of an administrative order requiring remediation of Wright Oil's facility in San Antonio, Texas. The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Under the proposed Agreed Final Judgment, QME will pay $25,000 of a total civil penalty of a $131,000 civil penalty conditioned on timely completion of site remediation and $5,000 in attorney's fees, and will conduct specified remedial activities at its facility. The remedial activities include the investigation and remediation of surface soil contamination, and the assessment and remediation of groundwater contamination.

Public Comment: The Office of the Attorney General will receive comments relating to the proposed Agreed Final Judgment for 30 days following publication of this Notice. Comments should be addressed to Albert M. Bronson, Assistant Attorney General, Natural Resources Division, P.O. Box 12548, Austin, TX 78711-2548 and should refer to State of Texas v. Wright Oil Company. The proposed Agreed Final Judgment may be examined at the Office of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas by appointment A copy of the proposed Agreed Final Judgment may be obtained by mail from the Office of the Attorney General. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $4.00 for the Decree, payable to the State of Texas.

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

TRD-200205923
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 10, 2002

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Texas Building and Procurement Commission

Invitation for Bid (IFB) Notice

Req #303-3-10205-TBPC

Project No. 01-013C-501

Project Name: Building 505 Laboratory Repairs and Renovations South Texas Health Care System (STHCS), 1301 Rangerville Road, Harlingen, Texas, 78551. For the Texas Department of Health

Sealed Bids for this project will be received until **3:00 P.M., October 21, 2002, at the Central Services Building, Bid Room No. 180, 1711 San Jacinto, Austin, TX 78701.** See the IFB for delivery options.

Plans and Specifications may be obtained from the A/E: Joshua Engineering Group, Inc., 2161 N. W. Military Highway, Suite 103, San Antonio, Texas 78213, Phone: (210) 340-2322, Fax: (210) 340- 1268, for a deposit of $25.00 per set, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Bid Conference will be held at the STHCS, 1301 Rangerville Road, Harlingen, Texas 78551, Building 500, at 2:00 p.m. on Wednesday, October 2, 2002. The TBPC will reject Bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S PROPOSAL FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Julia DeGlandon (Fax: 512-463-3360), julia.deglandon@tbpc.state.tx.us or through the Electronic State Business Daily at: **http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=43378**

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to Julia DeGlandon via fax at (512) 463-3360 or via email at julia.deglandon@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders, and its receipt by the Bidder must be acknowledged on the Contractor's Proposal Form or on the face of the Addendum and returned with the bid.

TRD-200205922
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Filed: September 10, 2002

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively

complete for the following projects(s) during the period of August 23, 2002, through August 29, 2002. The public comment period for these projects will close at 5:00 p.m. on October 4, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: LBC PetroUnited,L.P.; Location: The project is located at the LBC ship and barge docks in the Bayport Turning Basin, Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled League City, Texas. Approximate UTM Coordinates: Zone 15; Easting: 304022; Northing: 3276915. Project Description: The applicant proposes to conduct maintenance dredging at slightly different locations than previously authorized at the #1 and #2 barge docks and to maintenance dredge an area in front of the #1 ship dock. The applicant also requests authorization for an additional 2 feet of tolerance for overdredging or advanced maintenance. Authorization is sought to dredge a total area of approximately 19,500 square feet at the barge docks and a total of 59,400 square feet at the ship docks. Dredging would be done by either mechanical or hydraulic means. The applicant requests authorization to place material dredged by hydraulic means into Dredge Material Placement Area #14 or #15 and to place material from mechanical dredging into the LBC owned placement area authorized by Permit 21468. The applicant requests that the authorization to conduct maintenance dredging be valid for a period of ten years. CCC Project No.: 02-0265-F1; Type of Application: U.S.A.C.E. permit application #20684(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: PANACO, Inc.; Location: The project is located in Galveston Bay, in State Tracts 72, 73, and 74 in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 320407; Northing: 3280527. Project Description: The applicant proposes to drill and produce State Tract No 72, Well No. 1, utilizing a shell or gravel pad if necessary. If the well is successful, the applicant proposes to construct a well protection structure and a 30-foot by 40-foot production platform in State Tract No. 72 and two 6-inch-diameter, 7,252-foot-long pipelines through State Tract No. 73 to an existing structure in State Tract No. 74. CCC Project No.: 02-0266-F1; Type of Application: U.S.A.C.E. permit application #20684(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200205818
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 4, 2002

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of August 30, 2002, through September 5, 2002. The public comment period for these projects will close at 5:00 p.m. on October 11, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Texas General Land Office; Location: The project is located on the east side of the Gulf Intracoastal Waterway and immediately south of the JFK Causeway, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Crane Island NW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 673750; Northing: 3057700. Project Description: The Texas General Land Office (lessor) is making application to construct a 110-foot by 110-foot over-the-water restaurant with a 20-foot-wide perimeter deck on the north and west sides. A lower deck that is also 110-foot by 110-foot would have 11,625 square feet over the water. A 7-foot by 120-foot (840 square feet) docking pier is also proposed. The 20-foot outer deck and part of the pedestrian access ramp would cover an additional 5,388 square feet of over-the-water area. A proposed bulkhead is to be placed landward of Section 404 jurisdiction line, therefore, no fill or dredging is proposed. Primary access to the restaurant is land based, however, access would also be provided to recreational boaters. Existing uplands would be used for parking, servicing, and delivery. This application would amend an existing permit, #18538(03). CCC Project No.: 02-0245-F1; Type of Application: U.S.A.C.E. permit application #18538(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: City of Beaumont; Location: The project is located at Bunn's Canal, parallel to the Neches River, between Bunn's Bluff and Lawson's Crossing in Beaumont, Orange County, Texas. Bunn's Canal is part of the raw water conveyance system for the City of Beaumont Surface Water Treatment Plant. The canal is approximately 2.8 miles long, extending from Bunn's Bluff to Lawson's Crossing. The project can be located on the U.S.G.S. quadrangle map entitled Pine Forest, Texas. Approximate UTM Coordinates: Zone 15; Easting: 394189; Northing: 3335458. Project Description: Two levees on either side were designed to protect the raw water supply from salt-water intrusion. Due to decades of saturation, the levees have been breeched by rainwater and saturation, resulting in loss of raw water into adjacent wetlands and saltwater intrusion into the raw water supply. The applicant proposes to repair the levees and raise the height with fill material. Approximately 42,378 cubic yards of material would be placed in jurisdictional waters. Additionally, two 25-foot-wide culvert crossovers would be built across the canal at approximately 1-mile intervals for construction access. Due to budget constraints, the city would conduct construction activities over a 3-year

period. Impacts to jurisdictional waters would include 7.83 acres of cypress-tupelo swamp, 2.54 acres of oak-gum bottomland forest, and 0.14 acres of open-emergent wetland. For the unavoidable impacts to the 10.51 acres, the applicant proposes to purchase 68 credits at the Neches River Cypress Swamp Preserve. The cypress-tupelo impacts would be purchased at a 7:1 ratio, the oak-gum impacts at a 5:1 ratio, and the emergent wetland impacts at a 2:1 ratio. CCC Project No.: 02-0259-F1; Type of Application: U.S.A.C.E. permit application #22659 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: David Eller; Location: The project is located adjacent to Hynes Bay at the Swan Point public boat launch on Swan Point, approximately 1 mile south of Seadrift, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Seadrift, Texas. Approximate UTM Coordinates: Zone 14; Easting: 724750; Northing: 3142350. Project Description: The applicant proposes to mechanically dredge tidal waters of the US and excavate uplands to a depth of -5 feet mean sea level to construct a commercial marina for recreational boaters. No wetlands are reported to be present at the site. Approximately 18,500 cubic yards of material would be excavated during the project and placed in an upland disposal site. The applicant would also construct 68 covered boat stalls along the excavated marina area. The boat stalls would be arranged in 30-foot-wide single rows along the north and south sides of the basin and one 65-foot-wide double row would be perpendicular to the eastern side and in the basin's center. The north, central, and south rows would be approximately 225, 213, and 250 feet long, respectively. In addition, approximately 920 linear feet of articulating mats or bulkhead would be installed around the marina basin for bank stabilization. CCC Project No.: 02-0260-F1; Type of Application: U.S.A.C.E. permit application # 22723 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Fisher Channel and Dock Company, Inc.; Location: The project is located at the Fisher Channel Dock facilities on Commerce Street in Port Lavaca, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Lavaca East, Texas. Approximate UTM Coordinates: Zone 14; Easting: 732500; Northing: 3167400. Project Description: The applicant is requesting an extension of time for a 10-year maintenance dredging period of an existing boat basin and access channel in Lavaca Bay. The project has been revised to include the dredging of the channel up to the city patent line (approximately 410 feet), and the expansion of the on-site disposal material placement area. The basin and a portion of the channel would be hydraulically dredged to a depth of -6 feet mean sea level. Approximately 21,000 cubic yards of material would be removed from the basin area and approximately 3,600 cubic yards of material would be removed from the channel per dredging cycle. It is anticipated that there would be two dredging cycles during the ten-year maintenance period. Each dredging cycle would be done in phases due to the volume limit (19,000 cubic yards) of the placement area. In order to increase the placement area's capacity, the dredged material would be removed from the placement area, following dewatering, and placed on upland areas within the applicant's properties. The boundaries of the existing dredged material placement area would be revised, with approximately 23,000 square feet of existing uplands excavated within the inner harbor (basin area) to create open water habitat. Within the inner harbor area either 2,450 linear feet of sheet pile bulkhead or 19,600 square feet of articulating mats would be installed to prevent erosion of the proposed placement area. Either the bulkhead or the articulating mats would provide approximately 12,500 square feet of area at an elevation below + 1 foot mean sea level. Approximately 10,800 square feet (0.24-acre) of jurisdictional areas would be filled within the inner harbor in order to develop this placement area. Riprap would be placed on the outside boundary of the placement area along portions of the existing shoreline of Lavaca Bay and along approximately 675 feet of the eastern property boundary. Approximately 5,000 square feet of bay bottom would be covered by the riprap placed alongside the outer edge of either the proposed levees or the placement area itself. The placement area, including levees and riprap, would cover approximately 91,000 square feet, or 2.09 acres of bay bottom. In all, 2.33 acres (2.09 + 0.24) of jurisdictional area would be impacted by the proposed placement area. The excavation of uplands within the basin, and the placement of riprap and bulkheads or mats would create approximately 1.33 acres of open water and shallow water habitat. CCC Project No.: 02-0261-F1; Type of Application: U.S.A.C.E. permit application # 13436(06) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200205941
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 11, 2002

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Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #148a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Marlin Independent School District (Marlin ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the Marlin ISD included in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about October 16, 2002.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, September 20, 2002, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours

thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 2 p.m. (CZT) on Friday, September 20, 2002.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on October 4, 2002. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than October 7, 2002, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., October 4th deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, October 11, 2002. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the October 4, 2002, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 20, 2002, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - October 4, 2002, 2 p.m. CZT; Official Responses to Questions Posted - October 7, 2002, or as soon thereafter as practical; Proposals Due - October 11, 2002, 2 p.m. CZT; Contract Execution - October 16, 2002, or as soon thereafter as practical; Commencement of Project Activities - October 16, 2002.

TRD-200205935
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 11, 2002

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Notice of Withdrawal of Requests for Proposals

Pursuant to Chapter 403; and Chapters 2155, 2156, Section 2156.121; and Chapter 2157, Sections 2157.001 and 2157.121; and Chapter 2172, Sections 2176.104 and 2176.108; and Chapter 2113, Section 2113.103, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the withdrawal of Request for Proposals (RFP No. 134b) for provision of taxpayer forms printing and mailing services. The Comptroller hereby withdraws the RFP without making awards of any contract(s) to any respondents to the RFP.

Previously Issued RFP: This RFP was issued on May 24, 2002. The RFP was published in the May 24, 2002 issue of the *Texas Register*, (27 TexReg 4615) (RFP #134b).

TRD-200205909
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 10, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 09/09/02 - 09/15/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 09/09/02 - 09/15/02 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200205821
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 4, 2002

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the market competitive rate ceiling by use of the formulas and methods described in §345.151 through §345.154 Tex. Fin. Code. The market competitive rate ceiling for the period October 1, 2002, through September 30, 2003, is 21%.

TRD-200205823
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 4, 2002

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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 09/16/02 - 09/22/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 09/16/02 - 09/22/02 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200205914

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 10, 2002

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Texas Commission for the Deaf and Hard of Hearing

Request for Proposals

Grant Funds Available for One-Time Events

The Texas Commission for the Deaf and Hard of Hearing (TCDHH) has a total of $15,000 available for projects (1) to provide training to adults or children who are hard of hearing, late-deafened or oral deaf, or to the parents of children who are hard of hearing, late-deafened or oral deaf, or (2) to provide training to professionals and service providers that will directly impact the provision of services to persons who are hard of hearing, late-deafened or oral deaf. Applicants must complete and submit the attached form to be considered for funding. Applications will be received and considered by the Commission until such time as the funds are depleted, and on a "first-come first-served" basis. Applications will be evaluated on the basis of the selection criteria printed elsewhere in this document.

Project Requirements

Projects are to:

provide training for adults or children who are hard of hearing, late-deafened or oral deaf or provide training to parents of these children who are hard of hearing, late-deafened or oral deaf; or provide training for professionals such as audiologists, hearing aid dispensers or VR counselors, who will have a direct impact on the provision of services to the target population

be a one-time event and not more than 1 week in duration;

seek other funds and use TCDHH funding only as a last resort (when no other funds are available)

acknowledge Commission funding during the event, and on publications, letterhead, materials, etc (TCDHH artwork will be supplied if necessary) and

provide sign-in sheets for attendees, with a copy to TCDHH within 30 days after the last day of the event

Project funds can not be used for:

services that are legally required to be provided by other entities

equipment purchases

Priorities:

Projects may address the following topics relevant to persons who are hard of hearing, late-deafened or oral deaf:

workshops/training regarding legal rights, advocacy, communication strategies and communication access; assistive technology; coping strategies for improving daily living; resources and available services

workshops/training for professionals with potential for having direct impact on the target population, to ultimately enhance service provision to the population by providing information about such issues as hearing aids and other assistive devices, resources and support available and communication strategies.

Additional Information:

Preference will be given to:

not-for-profit groups

projects which can provide matching funds and

projects which address the needs of the Spanish-speaking community

Proposals must provide estimates of the number of persons to be served.

Proposals must list other funding sources sought.

Contact: Parties interested in submitting a proposal for any of the funding categories should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711, 512-407-3250 (Voice) or 512-407-3251 (TTY), to obtain a complete copy of the RFP. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas 78756, during normal business hours. The RFP is not available through fax. The RFP will also be available on the agency website at www.tcdhh.state.tx.us.

Deadline for submitting proposals: Applications must be received at least 30 days before the date of the event to be sponsored. Applicants may apply any time throughout the year until funds are depleted.

Maximum funds available: $15,000

Maximum award amount: $2,500

Project performance period: Projects funded shall hold sponsored event by August 31, 2003.

Selection Criteria:

Applications will be evaluated based on the following selection criteria:

1. The extent to which the project narrative is clear and comprehensive and explains who, what, when, where and how the training will be provided. 25 points.

2. The extent to which the proposed budget and cost allocations are reasonable in relation to the objectives of the project. 25 points.

3. The extent to which the qualifications of project staff are sufficient for the project (Resumes must be included) 25 points.

4. The extent to which the project would serve unmet needs and have a beneficial impact on the target population 25 points.

TRD-200205900
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: September 9, 2002

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Texas Commission on Environmental Quality

Correction of Error

The Texas Commission on Environmental Quality (TCEQ), formerly Texas Natural Resource Conservation Commission adopted new 30 TAC Chapter 25, concerning environmental testing laboratory accreditation and certification which appeared in the September 6, 2002, issue of the Texas Register (27 TexReg 8480). The following errors were included in the submission by TCEQ.

In the first paragraph of the preamble, it is stated that §25.26 is adopted *without change*. Section 25.26 had a change at adoption and should have been adopted *with change*. In the implied (a), there should have been a space between the word "in" and "whole" instead of "inwhole."

In the first paragraph of the preamble, it is stated that §25.74 is adopted *without change.* Section 25.74 had a change at adoption and should have been adopted *with change.* In §25.74(b)(1), the word "or" at the

end of the paragraph should have been deleted and moved to the end of paragraph (2) with a semicolon in front of it.

TRD-200205947

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Correction of Error Regarding Notice of Comment and Hearing Period on Draft Oil and Gas General Operating Permits and Draft Bulk Fuel Terminal General Operating Permit

The Texas Commission on Environmental Quality submitted a public notice entitled "Notice of Comment and Hearing Period on Draft Oil and Gas Operating Permits and Draft Bulk Fuel Terminal General Operating Permit" for the September 6, 2002, issue of the Texas Register (27 TexReg 8662). The notice was submitted in error, subsequently all dates will be rescheduled in a future public notice.

TRD-200205939
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 11, 2002

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Notice of Application and Preliminary Decision for Industrial Waste Permit

For The Period of September 6, 2002

APPLICATION AND PRELIMINARY DECISION. BP Products North America Inc., 2405 5th Avenue South, Texas City, Texas, a petroleum refinery has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal/major amendment to authorize the continued operation of eight existing tanks, and four existing surface impoundments for the storage and processing and disposal of hazardous and non-hazardous waste and Class 1, Class 2, and Class 3 industrial and solid wastes. In addition to the permit renewal, the applicant requested a name change from Amoco Oil to BP Products North America Ind., and a major amendment to allow the acceptance, at the Texas City facility, of wastes from other BP North America Inc. facilities in North America. The facility is located at the above address in Galveston County, Texas. This application was submitted to the TNRCC on January 23, 2001.

The TNRCC executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meet all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Moore Memorial Public Library, 1701 Ninth Avenue North, Texas City, Texas 77590.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application if requested in writing by an affected person, or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comment may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from BP Products North America Inc., at the address stated above or by calling Mr. Jay Brough at (409) 945-1011.

TRD-200205926
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Notice of Application and Preliminary Decision for Industrial Waste Permit

For The Period of September 5, 2002

APPLICATION AND PRELIMINARY DECISION. Safety - Kleen Systems, Inc., 3304 Womack Road, Orange, Orange County, Texas 79630, a commercial hazardous waste storage and processing facility, has applied to the Texas Natural Resource Conservation Commission

(TNRCC) for a permit renewal for the continued operation of two existing container storage areas and two existing tanks for the storage and processing of hazardous and Class 1 industrial solid waste. This application was submitted to the TNRCC on January 31, 2000.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Orange Public Library, 220 North 5th Street, Orange, Texas 77630.

Further information may also be obtained from Safety - Kleen Systems, Inc. at the address stated above or by calling Mr. Dale Dugas at 404-886-8365.

APPLICATION AND PRELIMINARY DECISION. U.S. Department of Energy (D.O.E.) -Pantex Plant, a hazardous waste management facility, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Class 3 permit modification to Permit No. HW-50284 for deletion of Provision VIII in the permit and its associated attachments (Attachments C, E, F, G, and H). The reference provisions and attachments address the corrective action requirements for solid waste management units (SWMUs), Areas of Concern (AOC), and groundwater at Pantex. Corrective action requirements for SWMUs, AOC, and groundwater have been incorporated into the Pantex Groundwater Compliance Plan application. Through this Class 3 modification request, the requirements and information provided in the corrective action provisions of the permit would be replaced by the requirements and information contained in the Compliance Plan issued as a result of processing the Pantex Groundwater Compliance Plan application. The facility is located seventeen miles northeast of Amarillo, north on U.S. Highway 60 and contiguous to the west side of State Highway 2373, on approximately 16,000 acres of land in the rural area of Carson County, Texas. This application was submitted to the TNRCC on June 5, 2001.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Andrews County Chamber of Commerce, 700 West Broadway, Andrews, Texas 79714.

Further information may also be obtained from U.S. D.O.E. - Pantex Plant, P.O. Box 30030, Amarillo, Texas 79120-0030 or by calling Mr. Daniel E. Glenn, Area Manager at (806) 477-3180.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comment may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the [permit/compliance plan] and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

TRD-200205927
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Notice of District Petition

Notices mailed during the period August 27, 2002 through August 29, 2002.

TNRCC Internal Control No. 05032002-D03; MNC Realty, L.P., (Petitioner) filed a petition for creation of Harris County Municipal Utility District Number 389 (District) with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed district; (3) the proposed District will contain approximately 250.6616 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within such jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-298, the City of Houston, Texas, effective April 30, 2002, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. According to the petition, a preliminary

investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $16,300,000.

TNRCC Internal Control No. 03062002-D01; Buena Vista-Bethel Special Utility District of Ellis County (The District) has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for authority to levy impact fees of $1,500 per equivalent single family connection for new connections to the water service within or near the service area of Buena Vista- Bethel Special Utility District. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The purpose of impact fees is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system which identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TNRCC Park 35 Office Complex located between Yager & Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvement plan, is available for inspection and copying at the Buena Vista- Bethel Special Utility District's office during regular business hours.

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ 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, TCEQ, 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 TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200205930

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. This requirement assists the commission in its shared responsibility with local governments such as cities and groundwater conservation districts to protect the water quality of the aquifer.

In accordance with 30 TAC §213, annual hearings are held on the Edwards Aquifer Protection Program and the TCEQ's rules addressing regulated development over the designated contributing, recharge, and transition zones of the Edwards Aquifer. The hearings for 2002 will be held at the following times and locations: Wednesday, October 9, 2002, at 7:00 p.m. at the City of San Antonio Municipal Council Chambers, 103 Main Plaza, San Antonio; Thursday, October 17, 2002, at 7:00 p.m. at the Texas Commission on Environmental Quality Park 35 Office Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin.

These hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the program 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments should reference the Edwards Aquifer Protection Program and may be submitted to Julie Talkington, Texas Commission on Environmental Quality, Field Operations Division, MC 174, P.O. Box 13087, Austin, Texas 78711-3087. Comments must be received by 5:00 p.m., November 19, 2002. For further information or questions concerning these hearings, please contact Ms. Talkington at (512) 239-0906.

TRD-200205940
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 11, 2002

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Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Soluble Reactive Phosphorus in the North Bosque River Watershed

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft implementation plan concerning phosphorus loading in the North Bosque River watershed of north central Texas. TCEQ will also conduct a public meeting to receive comments on the implementation plan.

The North Bosque and Upper North Bosque River segments are included in the State of Texas Clean Water Act, §303(d), list of impaired

water bodies. As required by §303(d) of the federal Clean Water Act, Total Maximum Daily Loads (TMDLs) were developed for soluble reactive phosphorus. The TMDLs were adopted by the commission on February 9, 2001 as updates to the State Water Quality Management Plan. Upon adoption by the commission, the TMDLs were submitted to the United States Environmental Protection Agency for review and approval. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

Public meetings will be held at the following two locations: Stephenville, on October 15, 2002, at 7:00 p.m., at the Agriculture Experiment Station/Extension Building, Room 130, located at 1229 North US Hwy. 281; and in Clifton, on October 17, 2002, at 7:00 p.m. at the Clifton Civic Center, in the Auditorium, located at 403 W. 3rd. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting. The purpose of the public meeting is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: description of control actions and management measures, legal authority, implementation schedule, follow-up monitoring plan, reasonable assurance, and measurable outcomes. After the public comment period, TCEQ staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TCEQ web site at *http://www.tceq.state.tx.us/water/quality/tmdl/tmdl_projects*.

Written comments should be submitted to Patricia Durón, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., October 21, 2002, and should reference 2002-1119-TML. For further information regarding this proposed TMDL implementation plan, please contact Larry Koenig, TCEQ Central Office, at (512) 239-4533. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's web site or by calling Patricia Durón at (512) 239-6087.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200205936
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 11, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of September 3, 2002 through September 9, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

TOWN OF ANTHONY has applied for a major amendment to TPDES Permit No. 10120-001 to authorize an increase in the discharge of treated domestic wastewater to a daily average flow not to exceed 565,000 gallons per day. The facility is located approximately 2,000 feet west of State Highway 20 and 4,000 feet south of Farm-to-Market Road 1905 in El Paso County, Texas.

CITY OF BAIRD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System(TPDES) Permit No. 10037-004, to authorize the discharge of treated filter backwash effluent from water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located at the southeast corner of 3rd Street and Walnut street, approximately 450 feet south and 1,600 feet west of the intersection of State Highway 283 and Business Interstate 20 in Callahan County, Texas.

BEXAR METROPOLITAN DEVELOPMENT CORPORATION which operates a potable water treatment facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04437, to authorize the discharge of clarifier water on an intermittent and flow variable basis via Outfall 001. The facility is located at 6725 Moreno Street, approximately 1.6 miles northwest of the intersection of Interstate Highway 35 and Loop 410, southwest of the City of San Antonio, Bexar County, Texas.

BISHOP CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 11754-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located northeast of the intersection of County Road 22 and Farm-to-Market Road 665 in the Town of Petronila in Nueces County, Texas.

CITY OF BOGATA has applied for a renewal of TPDES Permit No. 10065-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 332,000 gallons per day. The facility is located southeast of the City of Bogata, approximately 3,100 feet southwest of U.S. Highway 271 and 5,000 feet east of State Highway 37 in Red River County, Texas.

CITY OF BRENHAM has applied for a major amendment to TPDES Permit No. 10388-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 2,550,000 gallons per day to an annual average flow not to exceed 3,550,000 gallons per day. The proposed amendment requests authorization for marketing and distribution of Class A sewage sludge. The facility is located at 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in the City of Brenham in Washington County, Texas. The sludge treatment works will be located in the same site as the wastewater treatment facility.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 200 has applied for a renewal of TPDES Permit No. 12294-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,440,000 gallons per day. The facility is located at 13035 Kuykendahl Road approximately 4000 feet northwest of the intersection of Interstate Highway 45 and Rankin Road in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-150, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 600 feet east of U.S. Highway 59 at Greens Bayou Bridge on the south bank of Greens Bayou

CITY OF JAMAICA BEACH has applied for a major amendment to TPDES Permit No. 11033- 001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to

exceed 180,000 gallons per day to a daily average flow not to exceed 360,000 gallons per day. The facility is located approximately 600 feet east of Bob Smith Drive on Marina Drive within the boundaries of the City of Jamaica in Galveston County, Texas.

TOWN OF MUSTANG has applied for a major amendment to TNRCC Permit No. 11516-001 to authorize a change in the method of effluent disposal from irrigation/evaporation to discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via irrigation/evaporation of 10 acres of land. The facility will be located 800 feet east of the Interstate Highway 45 on Farm-to-Market Road 739 in Navarro County, Texas.

THE CITY OF NOCONA has applied for a renewal of TNRCC Permit No. 10355-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 126,000 gallons per day. The plant site is located on the north side of Locust Street approximately 0.75 miles northwest of the intersection of U.S. Highway 82, State Highway 175, and FM 103 in the City of Nocona in Montague County, Texas.

TENASKA GATEWAY PARTNERS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04111, to authorize the discharge of cooling tower blowdown and previously monitored effluents (boiler blowdown, demineralized wastewater, neutralized wastewater, and storm water) from Outfall 101 at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001. The applicant proposes to operate an electric generation station. The plant site is located adjacent to State Highway 315, approximately 0.5 mile southwest of the intersection of State Highway 315 and State Highway 840, approximately 7.5 miles northeast of the City of Mount Enterprise, Rusk County, Texas.

TEXAS POLYMER SERVICES, INC. which operates a plastics compounding plant, has applied for a major amendment to TPDES Permit No. 02835 to reduce flow limitations for Outfall 003; remove limitations and monitoring requirements for total suspended solids and biochemical oxygen demand (5-day) at Outfall 001; and authorize the discharge of contact cooling water via Outfall 002. The current permit authorizes the discharge of process cooling water, area washdown, and storm water runoff on a flow variable basis via Outfall 001; cooling tower blowdown, area washdown, treated sewage effluent, and storm water runoff on a flow variable basis via Outfall 002; and the discharge of water treatment wastes and storm water runoff at a daily average flow not to exceed 10,000 gallons per day via Outfall 003. The facility is located at 6522 Interstate Highway 10 West, approximately one mile east of State Highway 62 and west of the City of Orange, Orange County, Texas.

WEATHERFORD U.S., L.P. has applied for a renewal of TPDES Permit No. 14070-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,800 gallons per day. The facility is located approximately 0.75 mile west of U.S. Highway 290 and 2 miles east of Eldridge Road on Spencer Road in the City of Houston in Harris County, Texas.

CITY OF WEST UNIVERSITY PLACE has applied for a renewal of TPDES Permit No. 10058-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1000 feet west of Kirby Drive between Brays Bayou and North Brayswood Street in the City of Houston in Harris County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Natural Resource Conservation Commission (TNRCC) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF PORT LAVACA, to authorize the inclusion of Whole Effluent Toxicity (WET) limits. The facility is located at the southeast corner of the intersection of Newlin Street and Commerce Street in the City of Port Lavaca, approximately 1.4 miles northeast from the intersection of State Highway 35 and U.S. Highway 87 in Calhoun County, Texas

TRD-200205928
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Notice of Water Rights Application

Notices mailed during the period August 28, 2002 through September 10, 2002.

Proposed Permit No. TP-8229; Revised Notice of Temporary Water Rights Application; Brazos Sand Supply Company, 17127 CR 39, Rosharon, Texas 77583, seeks a Temporary Water Use Permit pursuant to Texas Water Code (TWC) §11.138, and Texas Natural Resource Conservation Commission Rules 30 TAC § 297.13 (a), et seq. to divert 2,100 acre-feet per annum and consumptively use not-to-exceed 250 acre-feet of water per annum within a three-year period (not- to-exceed a maximum consumptive use of 750 acre-feet of water) from the Brazos River, Brazos River Basin, for mining operations (sand and gravel washing) at a maximum diversion rate of 8.91 cfs (4,000 gpm). Applicant indicates that 88 percent of the water diverted will be returned to the river via underflow from a seven acre off-channel sedimentation pond adjacent to the river. Water would be diverted from a 13,600-ft reach of the Brazos River, located approximately 1.5 miles downstream of where FM 1462 crosses the Brazos River, located 15 miles northwest from Angleton and 7.5 miles west of Rosharon, Brazoria County. If granted, this temporary permit will be junior in priority to all existing water rights in the Brazos River Basin. The application was received by the TNRCC on April 19, 2002. The Executive Director of the TNRCC reviewed the application and declared it to be administratively complete on May 22, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 19, 2002.

Proposed Temporary Permit No. TP-8233; Commerce Properties, P.O. Box 163061, Austin, Texas 78716, has requested authorization, over a 3-year period, to divert and use 1,100 acre-feet of water from Brushy Creek, tributary of the San Gabriel River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin for agricultural purposes. The applicant has indicated that a maximum of 425 acre-feet of water will be diverted and used during any one-year period. Water will be diverted from a point in Williamson County where FM 685 intersects Brushy Creek, approximately 10.0 miles southeast of Georgetown and 3.0 miles southwest of Hutto, Texas, at a maximum diversion rate of 4.56 cfs (700 gpm) for irrigation (initial establishment of golf course vegetation) use. No diversion of water will be allowed when the flow of Brushy Creek is less than 2.0 cfs at a reference device to be installed by the applicant immediately downstream of the authorized diversion point. The applicant has indicated that after the requested three-year period, water from an alternate source will be used to irrigate the golf course. The application was received on April 22, 2002.

The Executive Director reviewed the application and determined it to be administratively complete on July 25, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 25, 2002.

APPLICATION NO. 5778; The Upper Trinity Regional Water District, P.O. Box 305, Lewisville, Texas, 75067, applicant, seeks a Water Use Permit pursuant to 11.042, 11.046 and 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to a contract with the City of Commerce, the Upper Trinity Regional Water District acquired the right to transport and use up to 16,106 acre-feet of water per annum for municipal and industrial purposes from Lake Chapman in the Sulphur River Basin. This water is specifically authorized to the City of Commerce in Certificate of Adjudication No. 03-4797, as amended. Interbasin transfer authorization to the Trinity River Basin for 16,106 acre-feet of water per annum for municipal and industrial use is authorized by Certificate of Adjudication No. 03-4797, as amended. The Upper Trinity Regional Water District, pursuant to a pass through agreement with the Cities of Denton and Lewisville, seeks to use and reuse Lake Chapman (Lake Cooper) developed water from the Sulphur River Basin, and purchased from the City of Commerce, by conveying the effluent from various wastewater treatment plants (WWTPs) receiving water that originates in Lake Chapman, and which plants are operated or used by the applicant or its customers that discharge into either Lake Lewisville or tributaries of Lake Lewisville including the following: (1) The Celina WWTP on an unnamed tributary of Little Elm Creek; (2) The Lakeview Regional WWTP on Lewisville Lake; (3) The Doe Branch (Eastside) WWTP on Doe Branch; (4) The Riverbend WWTP on Little Elm Creek; (5) The Peninsula WWTP on Cantrell Slough; (6) The Krum WWTP on North Hickory Creek; and (7) The Sanger WWTP on Ranger Branch. Subsequent diversion of the wastewater for reuse will occur at UTRWD's Lake Lewisville diversion facilities. The effluent discharge from the City of Lewisville WWTP on Prairie Creek, tributary of the Elm Fork Trinity River, downstream of Lake Lewisville is proposed be re-directed by pipeline to Lake Lewisville for diversion and reuse within the UTRWD's service area. Applicant also seeks to use the bed and banks of the various tributaries of Lake Lewisville downstream of the WWTPs and upstream of Lake Lewisville to convey the developed water from the WWTPs to UTRWD's existing and proposed future diversion facilities on Lake Lewisville. The average diversion rate of the reuse water to be authorized for diversion from the perimeter of Lake Lewisville will increase over time to an average of 14.4 million-gallons-per-day (MGD) with a peak daily rate of not more than 43.2 MGD. Applicant states that UTRWD's actual consumptive use of Lake Chapman water, including its reuse of Lake Chapman water shall not exceed 90 % of the actual total volume of Lake Chapman water that the UTRWD imports each year into the Trinity River Basin. The UTRWD's reuse of Lake Chapman water will not include water derived from other sources, and any Lake Chapman water returned to Lake Lewisville and not consumptively used will be available for use by other water right holders on the lake. Applicant indicates it will use actual discharge measurements and a daily accounting model to track water involved in the reuse project which will be available for reuse from Lake Lewisville. Applicant states that there will be no impact on instream uses and bay and estuary freshwater inflow needs of the Trinity River Basin because the water UTRWD proposes to reuse is water transferred from Lake Chapman in the Sulphur River Basin to the Trinity River Basin as "developed water" and represents a water supply not appropriate to meet such needs. The application was received on August 2, 2001, and additional information in support of the application was received on February 1, 2002, February 15, 2002, May 3, 2002, and May 22, 2002. The application was declared administratively complete on May 28, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of this notice. This notice was dated August 30, 2002.

Application No. 03-4799C; City of Irving, applicant, P.O. Box 152288, Irving, Texas, 75015- 2288, seeks to amend Certificate of Adjudication No. 03-4799, as amended, pursuant to Texas Water Code 11.046 and 11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 03-4799, as amended, authorizes the City of Irving to impound 114,265 acre-feet of water in Lake Chapman (previously known as Lake Cooper) on the South Sulphur River, Sulphur River Basin, Delta and Hopkins Counties, and to divert and use, with a time priority of November 19, 1965, not to exceed 44,820 acre-feet of water per annum for municipal use and not to exceed 9,180 acre-feet of water per annum for municipal and industrial use within the service area of the City of Irving, in the Trinity River Basin. Diversion is from the perimeter of the reservoir at 33.286 N Latitude and 95.688 W Longitude at 220 million-gallons-per-day at a maximum rate of 340.36 cfs (152,753.57 gpm). Applicant is authorized to use the bed and banks of Doe Branch, tributary of Elm Fork Trinity River, to convey the water from Lake Chapman through Lake Lewisville to the City of Dallas' Elm Fork water treatment plant (WTP) for subsequent diversion and delivery, by the City of Dallas, to the City of Irving. The discharge to Doe Branch, of not more than 54,000 acre-feet of water per annum, at a maximum rate of 200 cfs (89,760 gpm), is located at N 61 degrees E, 1,075 feet from the southwest corner of the Phillips Barns Survey, Abstract No. 179, also being at 33.219 degree N Latitude and 96.889 degrees W Longitude. Water diverted but not consumed in the Trinity River Basin must be returned to the Trinity River Basin at applicant's disposal plants and disposal plants of industrial users. Applicant seeks to remove the requirement to return water to the Trinity River Basin diverted but not consumed, and to add authorization to re-use, in the Trinity River Basin all of its Sulphur River Basin water as "developed" water made available only by the efforts of the applicant prior to its initial discharge into the Trinity River Basin, subject to obtaining future authorizations, after identifying specific points of discharge and diversion and satisfying the requirements of Texas Water Code 11.042 for use of bed and banks for the delivery of the reuse water, so that neither existing nor future water rights in the Trinity River Basin may rely on its availability. The amendment application was received on July 15, 2002. The application was determined to be administratively complete and accepted for filing on July 31, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 18-2068A; KWW Ranches, Ltd., P.O. Box 6478, San Antonio, Texas 78209, applicant, seeks an amendment to Certificate of Adjudication No. 18-2068 pursuant to Texas Water Code 11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 18-2068 included authorization for the owner to maintain a dam and reservoir (known as Walter Creek Reservoir) with the capacity of 600 acre-feet of water on Walter Creek, tributary of the Guadalupe River, Guadalupe River Basin. A point on the dam at the center of the stream is S 80 degrees W, 350 feet from northeast corner of the Charles Kayser Survey, Abstract 285, Kendall County. Applicant seeks to amend Certificate of Adjudication No. 18-2068 to authorize the diversion and use not to exceed 72 acre-feet of water per annum from the perimeter of Walter Creek Reservoir for agricultural purposes to irrigate 250 acres of land out of an approximate 788.41 acre tract in the Carl Phillip Georg Survey No. 265, Abstract No. 714, Charles Bergstrom Survey No. 533 1/2, Abstract No. 45, Louis Ranzau Survey No. 108 1/2, Abstract No. 403,

Georgetown R.R. Co. Survey No. 239, Abstract No. 710, Casper Marshall Survey No. 777, Abstract No. 338, and Wm. B. Lockhart Survey No. 108, Abstract No. 307, being part of 4,272.72 acres at a maximum diversion rate of 2.0 cfs (897.6 gpm). Walter Creek Reservoir is located S 81degrees W, 687 feet from the NE corner of the C. Kayser Original Survey No. 504, Abstract No. A10285, Kendall County, Texas, also being at Latitude 29.87 degrees N and Longitude 98.51 degrees W. The land to be irrigated is located in the aforesaid surveys and the diversion point is located at the perimeter of the aforesaid reservoir. Applicant has indicated that a groundwater well is available, with an average flow rate of 203 gpm, to supplement the surface water supply to meet the proposed irrigation demands. Ownership of the land to be irrigated is evidenced by a Memorandum of Option Contract No. 00161459, Volume No. 731, Pages 320-322. The application was received on April 5, 2001 and additional information was received on August 10, 2001, December 17, 2001, April 5, 2002 and May 8, 2002. The application was declared administratively complete and filed on May 8, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

APPLICATION NO.01-3784A; Phillips 66 Company, Borger Refinery and NGL Center, P.O. Box 271, Borger, Texas, 79008-0271, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for an Amendment to a certificate of adjudication pursuant to 11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Applicant is authorized to maintain an existing dam and reservoir (Refinery Dam No. 1-Old Canyon Dam) on Dixon Creek, tributary of the Canadian River, Canadian River Basin, Hutchinson County, Texas, located in the Mary Whitley Original Survey No. 1, Abstract No. 403, Hutchinson County, Texas, at Latitude 35.708 N, Longitude 101.359 W, bearing North 41.364 degrees East 1,565 miles from Borger, Texas, and impound therein not to exceed 78 acre-feet of water. Applicant is also authorized to use the aforesaid reservoir as a holding pond and to divert and transfer not to exceed 230 acre-feet of water per year for non-consumptive (water quality improvement) purposes. Water diverted is treated and returned to Dixon Creek . Applicant seeks to amend Certificate of Adjudication No. 01-3784 by adding five existing dams and reservoirs on unnamed tributaries of Dixon Creek, tributary of Canadian River; an unnamed tributary of Patton Creek, tributary of the Canadian River; and an unnamed tributary of the Canadian River. The five existing dams and reservoirs are located in the Canadian River Basin, Hutchinson County, for non-consumptive (water quality improvement) purposes, from which all water is eventually released. The dams and reservoirs are all located in the Mary Whitley Original Survey No. 1, Abstract No. 403, Hutchinson County, Texas. Their names, descriptions, and locations are as follows: Page's Dam - The centerline of the dam is N 78 degrees 25 feet E, 6,720 feet from the southwest corner of the Houston and Texas Central Railroad Survey, Block 46, Original Survey No. 64, Hutchinson County, Texas, located on an unnamed tributary of Dixon Creek at Latitude 35.705 N., Longitude 101.356 W. Water impounded by dam structure at normal maximum operating level is 0.2 acre-feet. Surface area in acres of reservoir at normal maximum operating level is 0.04 acres. Philtex Canyon Dam - The centerline of the dam is N 108 degrees 33 feet E, 4,850 feet from the southwest corner of the Houston and Texas Central Railroad Survey, Block 46, Original Survey No. 64, Hutchinson County, Texas, located on an unnamed tributary of Dixon Creek at Latitude 35.691 N, Longitude 101.359 W. Water impounded by dam structure at normal maximum operating level is greater than 1.0 acre-foot. Surface area in acres of reservoir at normal maximum operating level is 0.16 acres. Oden's Dam - The centerline of the dam is N. 85 degrees 43 feet E, 1,980 feet from the southwest corner of the Houston and Texas Central Railroad Survey, Block 46, Original Survey No. 64, Hutchinson County, Texas, located on an unnamed tributary of Patton Creek at Latitude 35.702 N, Longitude 101.370 W. Water impounded by dam structure at normal maximum operating level is 5.1 acre-feet. Surface area in acres of reservoir at normal maximum operating level is 0.34 acres. Jackson Hole Dam - The centerline of the dam is N 72 degrees 52 feet E, 7,392 feet from the southwest corner of the Houston and Texas Central Railroad Survey, Block 46, Original Survey No. 64, Hutchinson County, Texas, located on an unnamed tributary of Dixon Creek at Latitude 35.705 N, Longitude 101.353 W. Water impounded by dam structure at normal maximum operating level is 7.5 acre-feet. Surface area in acres of reservoir at normal maximum operating level is 0.30 acres. New Canyon Dam - The centerline of the dam is N 65 degrees 05 feet E, 4,756 feet from the southwest corner of the Houston and Texas Central Railroad Survey, Block 46, Original Survey No. 64, Hutchinson County, Texas, located on an unnamed tributary of the Canadian River at Latitude 35.708 N, Longitude 101.363 W. Water impounded by dam structure at normal maximum operating level is 129 acre-feet. Surface area in acres of reservoir at normal maximum operating level is 4.30 acres. The application was received on January 2, 2002. The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on August 5, 2002. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5784; Bluegreen Southwest One, L. P., 3870 F.M. 1488, Magnolia, Texas 77354, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks to construct and maintain two on-channel dams and reservoirs on Fish Creek, tributary of Lake Creek, tributary of the San Jacinto River, in the San Jacinto River Basin, for in-place recreation and aesthetic purposes in Montgomery County. The proposed "Ridge Lake" has a normal operating capacity of 453 acre-feet of water and has a surface area of 57 acres. The centerline of the Ridge Lake dam will be at Latitude 30.290 N, Longitude 95.568 W also described as bearing N 8.1330 degrees W, 3,900 feet from the southwest corner of the James Pevehouse Original Survey, Abstract No. 29, approximately 6 miles west of Conroe, Texas. The proposed "Trophy Lake" has a normal operating capacity of 390 acre-feet of water and has a surface area of 36.1 acres. The centerline of the Trophy Lake dam will be at Latitude 30.288 N, Longitude 95.552 W also described as bearing N 128.7 degrees E , 1,134 feet from the southeast corner of the Thomas V. Mortimer Original Survey, Abstract No. 383, also approximately 6 miles west of Conroe, Texas. Ownership of the land is recorded under Montgomery County Clerk File Numbers 2001-014119 and 2001-014120 in the Real Property Records of Montgomery County. Applicant has indicated that the reservoir will be maintained at the normal operating level using ground water. No diversions are requested. The application was received on April 4, 2002. The Executive Director reviewed the application and determined it to be administratively complete and filed on August 8, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

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 TCEQ 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 TCEQ 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, TCEQ, 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 TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200205929
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission 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 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 **October 28, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission 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 proposed AO is available for public inspection at both the commission'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 an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 28, 2002**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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 commission in **writing**.

(1) COMPANY: Brotherton Water Supply Corporation; DOCKET NUMBER: 2002-0592-PWS- E; IDENTIFIER: Public Water Supply (PWS) Number 0740020; LOCATION: Bonham, Fannin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c), by failing to collect and submit samples for lead and copper analysis; PENALTY: $400; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Arlington, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Dameron Oil Company; DOCKET NUMBER: 2002-0534-PST-E; IDENTIFIER: Enforcement Identification Number 17543; LOCATION: near Cameron, McLennan County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a delivery certificate prior to depositing a regulated substance into the regulated underground storage tanks (USTs); PENALTY: $800; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239-6589; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: East Rio Hondo Water Supply Corporation; DOCKET NUMBER: 2002-0277- PWS-E; IDENTIFIER: PWS Number 0310096; LOCATION: Rio Hondo, Cameron County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(B) and THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(j), by failing to complete a customer service inspection certification; PENALTY: $21,088; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425- 6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Garansuay Group, Inc.; DOCKET NUMBER: 2002-0732-PWS-E; DENTIFIER: PWS Number 1330150; LOCATION: Kerrville, Kerr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1)(A) and THSC, §341.033(a), by failing to ensure that a public drinking water system with 33 connections is under the direct supervision of a Class D certified operator; PENALTY: $100; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2002-0511-AIR- E; IDENTIFIER: Air Account Number JE-0052-V; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: ethylene oxide/glycol plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and THSC, §382.085(b), by failing to maintain volatile organic compounds; and Air Permit Number 5972A, 30 TAC §§101.20(1), 113.130, and 116.115(c), 40 Code of Federal Regulations (CFR) §60.482-9(a) and §63.171(a), and THSC, §382.085(b), by failing to properly repair leaking components; PENALTY: $43,750; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Johns Manville; DOCKET NUMBER: 2002-0865-AIR-E; IDENTIFIER: Air Account Number JH-0025-O; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: fiberglass insulation manufacturing; RULE VIOLATED: 30 TAC §111.111(a)(1)(F)(ii), Federal Operating Number O-01677, and THSC, §382.085(b), by failing to perform annual opacity readings from stationary vents; and 30 TAC §122.146(1) and (2), Federal Operating Permit Number O-01677, and THSC, §382.085(b), by

failing to submit in a timely manner, the required annual compliance certification; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Arlington, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Lambert Oil Company, Inc.; DOCKET NUMBER: 2002-0822-PST-E; IDENTIFIER: Enforcement Identification Number 17977; LOCATION: Proctor, Comanche County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator had a valid, current delivery certificate; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Little Nut Oil Company; DOCKET NUMBER: 2002-0817-PST-E; IDENTIFIER: Enforcement Identification Number 18156; LOCATION: Carthage, Panola County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator had a valid, current delivery certificate; PENALTY: $4,000; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: McAllen Hospitals, L.P. dba McAllen Heart Hospital; DOCKET NUMBER: 2002-0506-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 67200; LOCATION: McAllen, Hidalgo County, Texas; TYPE OF FACILITY: speciality hospital; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B), and the Code, §26.3475(c)(1), by failing to monitor the UST and monitor piping in the UST system; 30 TAC §334.8(c)(4)(B) and (5)(C), and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and to permanently tag, label, or mark all fill pipes with the identification number; and 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all UST system records; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: New Wal-Tex Corporation dba Rendon Chevron; DOCKET NUMBER: 2001- 1471-PST-E; IDENTIFIER: PST Facility Identification Number 0036562; LOCATION: Burleson, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c), by failing to monitor for releases at least once per month; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration form is fully and accurately completed; PENALTY: $6,500; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Quinlan; DOCKET NUMBER: 2001-1343-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13725-001; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (9)(A), TPDES Permit Number 13725-001, and the Code, §26.121, by failing to prevent unauthorized discharge from the wastewater treatment facility, comply with chlorine residual permit minimum limit of one milligram per liter, report an unauthorized discharge as soon as possible or no later than 24 hours after the discharge occurred, and submit the required discharge monitoring reports; PENALTY: $15,125; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Texas A&M University System; DOCKET NUMBER: 2002-0699-MWD-E; IDENTIFIER: TPDES Permit Number 11345-001; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), and (9), TPDES Permit Number 11345-001, and the Code, §26.121, by failing to conduct self-monitoring procedures, operate the facility to maintain compliance with permitted effluent limits, and notify the regional office in writing of effluent violations; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: The Texas Department of Public Safety; DOCKET NUMBER: 2002-0729- PST-E; IDENTIFIER: PST Facility Identification Number 0004751; LOCATION: Lamesa, Dawson County, Texas; TYPE OF FACILITY: underground storage tank; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570- 1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(14) COMPANY: City of Weimar; DOCKET NUMBER: 2001-1445-MWD-E; IDENTIFIER: TPDES Permit Number 10311-001; LOCATION: Weimar, Colorado County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10311-001, and the Code, §26.121, by failing to comply with permitted effluent limitations for total suspended solids, pH, and dissolved oxygen; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of West Tawakoni; DOCKET NUMBER: 2001-0988-MWD-E; IDENTIFIER: TPDES Permit Number 11331-001; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.42(a) and §305.125(2), by failing to submit an application for permit renewal; 30 TAC §305.125(1) and (5), TPDES Permit Number 11331-001, and the Code, §26.121, by failing to operate and maintain its collection system and wastewater treatment facility, submit noncompliance notification for violations which deviated from the permitted limit by more than 40%, and submit an annual sludge report; PENALTY: $22,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200205915
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2002

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Texas Forest Service

Notice of Consultant Contract Amendment and Renewal

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Forest Service publishes this notice of amendment and renewal to the Texas Forest Services' contract with TIP Development Strategies, Inc., 6836 Austin Center Blvd., Suite 140, Austin, TX 78731. The notice of invitation was published in the August 10, 2001 issue of the *Texas Register*, Volume 26, Number 32, Pages 5893-6060. The notice

of intent to award was published in the November 30, 2001 issue of the *Texas Register*, Volume 26, Number 48, Pages 9665-9990.

The original term of the contract was November 23, 2001 through August 31, 2002 for a total amount not to exceed $75,000. The amendment and renewal will be for a period from September 1, 2002 through August 31, 2003 for an amount not to exceed $18,000.

The consultant will continue evaluation of the identified strategies, build support for identified strategies, and provide additional implementation guidance.

All additional documentation and data are due on or before August 31, 2003.

TRD-200205943
James B. Hull
Director and State Forester
Texas Forest Service
Filed: September 11, 2002

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General Land Office

Coastal Boundary Survey--Treasure Island Municipal Utility District, Brazoria County

NOTICE OF APPROVAL OF COASTAL BOUNDARY SURVEY

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that David Dewhurst, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by Elisandro Leos, conducted July 17, 2002, locating the following shoreline boundary:

Survey in Treasure Island Municipal Utility District, Brazoria County.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director of the Survey Division, Texas General Land Office, by phone at 512-463-5212, email ben.thomson@glo.state.tx.us, or fax 512-463-5098.

TRD-200205942
Larry Soward
Chief Clerk
General Land Office
Filed: September 11, 2002

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program

Notice of Funding Availability

FY 2002 Community Housing Development Organization Funding Cycle

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $8,387,248.00 for the 2002 Community Development Housing Organization (CHDO) funding cycle for the HOME Investment Partnerships Program. The availability and use of these funds is subject to the State regulations and the federal HOME Final Rule governing the HOME program (24 CFR Part 92) and 10 TAC the HOME Investment Partnerships Program rules at 10 TAC §53.63. Community Housing Development Organization (CHDO) Certification.

ALLOCATION OF HOME CHDO FUNDS

The funds will be awarded based on a statewide competition. Eligible HOME CHDO activities include:

Homebuyer Assistance

Rental Housing Development

The Department will prioritize applicants by service area (non-Participating Jurisdiction) with the highest scoring applicant being recommended for funding. Only in the case of Special Needs activities will the Department allow awards to applicants whose service area falls within a Participating Jurisdiction.

Eligible Applicants

The Department provides HOME CHDO funding from the federal government to eligible recipients:

Community Housing Development Organization

Non-profit Organizations

All applicants must submit an application for CHDO certification with their application to the Department for HOME funds

Under the HOME CHDO Program, the Department provides loans or grant funds to eligible recipients for the provision of housing to low, very low and extremely low-income individuals and families. A CHDO acting as an owner, sponsor or developer may include the following eligible activities under the HOME Program:

acquisition of homebuyer properties

acquisition and rehabilitation of homebuyer properties

acquisition and rehabilitation of rental housing

new construction of rental housing

Application Procedures, Final Filing

The TDHCA HOME Application Guide will be available on the Department's website at www.tdhca.state.tx.us on September 20, 2002 under What's New or you may call 512-475-3109 to request an application copy on or after September 23, 2002. Deadline date for submitting an application is 5:00 p.m. on November 18, 2002.

If the application is hand-delivered to the HOME Program office at 507 Sabine, Suite 900, Austin, Texas, the application must be delivered by 5:00 p.m. on November 18, 2002.

If the application is mailed, the mailing package for the application must be postmarked no later than midnight on November 18, 2002 and received at the Department within three (3) calendar days of the respective deadline.

If the application is sent through a private carrier such as Federal Express or Airborne, the application must be received by the carrier no later than midnight on November 18, 2002, and received by the HOME Program no later than the day after the respective deadline.

Applications that do not meet the filing deadline requirements will be returned to the applicant and will not be considered for funding. Applications must be on forms provided by the Department, they cannot be altered or modified and must be in final form before submitting them to the Department. Applications will not be accepted by facsimile.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Program

P.O. Box 13924, Suite #900

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite #900

Austin, Texas 78701

After the application deadline, HOME staff may contact applicants to ask the location of specific information in the submitted application. In addition, the Department may, in its sole discretion, request a clarification of information provided that such information does not affect the competitive rating and ranking of the application or improve the substantive quality of the application. No information, whether written or oral, will be accepted if the provision of such information would result in a competitive advantage to the applicant or a competitive disadvantage to other applicants.

This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to attend the application training workshops.

Application Workshops

The Department will present one-day HOME CHDO Program Application Workshops that will provide an overview of the HOME Program and exclusively address the CHDO Certification, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME project. The HOME CHDO Application Workshop schedule will be posted on the TDHCA website at www.tdhca.state.tx.us. The workshops will be held at the following times and locations:

September 30, 2002

8:00am-5:00pm

PLAINVIEW

Broadway Shelter House

101 Southeast 1st Street

Plainview, Texas 79072

(806) 296-1124

September 30, 2002

8:00am-5:00pm

SAN BENITO

Chamber of Commerce

200 North Ballard Street

San Benito, Texas 78586

(956) 361-3833 Extension. 207

October 2, 2002

1:00pm-5:30pm

TERRELL

Terrell Public Library

301 North Rockwall Street

Terrell, Texas 75160

(972) 551-6663

October 3, 2002

8:00am-5:00pm

DEL RIO

Housing Authority of City of Del Rio

301 North Rockwall Street

Del Rió, Texas 78840

(972) 551-6663

October 8, 2002

9:30 am -5:00 pm

MIDLAND

Midland County Library

301 West Missouri Avenue

Midland, Texas 79701

(915) 688-8991

October 10, 2002

9:00am-5:00pm

CONROE

Montgomery County Library

104 I-45 North

Conroe, Texas 77301

(936) 788-8377, Extension 243

October 9, 2002

9:00am-4:00pm

SOCORRO

Bienestar Familiar (In El Mercadito Building)

10189 Socorro Road

Socorro, Texas 79927

(915) 859-4230

October 14, 2002

8:00am-5:00pm

AUSTIN

TDHCA- 4th Floor Boardroom

507 Sabine Street

Austin, Texas 78711-3941

(912) 475-3109

Staff Recommendations

It is anticipated that staff recommendations for the HOME CHDO Homebuyer Assistance and HOME CHDO Rental Housing Development awards will be presented at the January 2003 TDHCA Governing Board meeting.

Resolution Requirements

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors) authorizing the submission of the application.

Audit Requirement

An applicant is not eligible to apply for funds or any other assistance from the Department unless any past audit and Audit Certification Form

has been submitted to the Department in a satisfactory format on or before the application deadline for the funds or other assistance per 10 TAC 1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applicants for funding to the TDHCA Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC 1.3(c).

CHDO Certification

Certification will be awarded in accordance with the rules and procedures as set forth in the HOME Investment Partnerships Program rules at 10 TAC §53.63. Community Housing Development Organization (CHDO) Certification. If all requirements under this Section are met, the Applicant is certified as a CHDO upon the award of the HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside.

If an Applicant submits an application for CHDO certification for a service area that is located in a local Participating Jurisdiction (PJ), the Applicant must submit evidence of the local taxing jurisdiction or local PJ certification or designation of the Applicant as a CHDO.

In the case of an Applicant applying for HOME funds (CHDO set-aside) from the Department to be used in a PJ, where neither the PJ nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in the HOME Investment Partnerships Program rules at 10 TAC §53.63. Community Housing Development Organization (CHDO) Certification applies. An application for CHDO certification will only be accepted if submitted with an application to the Department for HOME funds.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-200205946
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2002

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HOME Investment Partnership Program

Notice of Funding Availability

FY 2002 Contract For Deed Conversion Cycle

The Texas Department of Housing and Community Affairs (Department) announces the availability of $2,000,000.00 for the HOME Investment Partnerships Program 2002 Contract for Deed Conversion (CFDC) funding cycle. The availability and use of these funds is subject to the State regulations and the Federal HOME Final Rule governing the HOME program (24 CFR Part 92).

ALLOCATION OF HOME CFDC FUNDS

The CFDC funds will be awarded based on a competitive basis and must serve colonia residents who live within 150 miles of the Texas-Mexico Border. Eligible HOME CFDC activities include:

Contract for Deed Conversions

Eligible homeowners must be permanent residents of the United States. The property must be located in a colonia as defined in Section 2306.581, Texas Government Code. The definition of a colonia means a geographic area located in a county some part of which is within 150 miles of the international border of this state and that has a majority propulation composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or has the physical and economic characteristics of a colonia, as determined by the department.

The Department will score and rank applications with the highest scoring applicants being recommended for funding.

Eligible Applicants

The Department provides HOME CFDC funding from the federal government to eligible recipients:

Units of General Local Government

Public Housing Agencies

Non-profit Organizations

For-profit Entities

Under the HOME CFDC Program, the Department provides loans or grant funds to eligible recipients for the provision of housing to low, very low and extremely low-income colonia residents. The following are eligible activities:

acquisition (costs related to the prepayment of existing contract for deeds and costs related to the conversion).

acquisition and rehabilitation (minor rehabilitation costs associated with bringing the home up to Colonia Housing Standards).

Application Procedures, Final Filing

The TDHCA HOME Application Guide will be available on the Department's website at www.tdhca.state.tx.us on September 20, 2002 under What's New or you may call 512-475-3109 to request an application copy on or after September 23, 2002. Deadline date for submitting an application is 5:00 p.m. on November 18, 2002.

If the application is hand-delivered to the HOME Program office at 507 Sabine, Suite 900, Austin, Texas, the application must be delivered by 5:00 p.m. on November 18, 2002.

If the application is mailed, the mailing package for the application must be postmarked no later than midnight on November 18, 2002 and received at the Department within three (3) calendar days of the respective deadline.

If the application is sent through a private carrier such as Federal Express or Airborne, the application must be received by the carrier no later than midnight on November 18, 2002, and received by the HOME Program no later than the day after the respective deadline.

Applications that do not meet the filing deadline requirements will be returned to the applicant and will not be considered for funding. Applications must be on forms provided by the Department, they cannot be altered or modified and must be in final form before submitting them to the Department. Applications will not be accepted by facsimile.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Program

P.O. Box 13924, Suite #900

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite #900

Austin, Texas 78701

After the application deadline, Department staff may contact applicants to ask the location of specific information in the submitted application. In addition, the Department may at its sole discretion, request a clarification of information provided that such information does not affect the competitive rating and ranking of the application or improve the substantive quality of the application. No information, whether written or oral, will be accepted if the provision of such information would result in a competitive advantage to the applicant or a competitive disadvantage to other applicants.

This NOFA does not include the text of the various applicable regulatory provisions that may be important to the HOME CFDC Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to attend the application training workshops.

Application Workshops

The Department will present one day HOME CFDC Application Workshops that will provide an overview of the HOME Program and exclusively address the CFDC issues, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME CFDC project. The HOME CFDC Application Workshop schedule will be posted on the TDHCA website at www.tdhca.state.tx.us. The workshops will be held at the following times and locations:

October 1, 2002

8:00am-5:00pm

SAN BENITO

Chamber of Commerce

200 North Ballard Street

San Benito, Texas 78586

(956) 361-3833 Extension. 207

October 4, 2002

8:00am-5:00pm

DEL RIO

Housing Authority of City of Del Rio

301 North Rockwall Street

Del Rió, Texas 78840

(972) 551-6663

October 10, 2002

9:00am-4:00pm

SOCORRO

Bienestar Familiar (In El Mercadito Building)

10189 Socorro Road

Socorro, Texas 79927

(915) 859-4230

Staff Recommendations It is anticipated that staff recommendations for the HOME CFDC awards will be presented during the 1st quarter of 2003 to the TDHCA Governing Board.

Resolution Requirements The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (for example: City Council, County Commissioner's Court or Board of Directors) authorizing the submission of the application.

Audit Requirement

An applicant is not eligible to apply for funds or any other assistance from the Department unless any past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for the funds or other assistance per 10 TAC 1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applicants for funding to the TDHCA Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC 1.3(c).

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-200205950
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of GAINSCO COUNTY MUTUAL INSURANCE COMPANY to LIBERTY COUNTY MUTUAL INSURANCE COMPANY a domestic fire and/or casualty company. The home office is in Irving, Texas.

Application to change the name of INDUSTRIAL COUNTY MUTUAL INSURANCE COMPANY to AAA TEXAS COUNTY MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

Application for admission to the State of Texas by FIDELITY NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Santa Barbara, California.

Application for incorporation to the State of Texas by HIGHLANDS P& C INSURANCE COMPANY, domestic fire and/or casualty company. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by EDUCATORS EMPLOYMENT PROTECTION CORPORATION, a domestic prepaid legal company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200205938
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 11, 2002

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Correction of Error

The Texas Department of Insurance proposed amendments to 28 TAC §7.86, concerning Custodied Securities, and to §11.803, concerning Investments, Loans, and Other Assets. The rules appeared in the September 6, 2002, *Texas Register* (27 TexReg 8407 and 8410).

In the fourth paragraph of the preamble to §7.86, the deadline to submit comments, "September 6, 2002" is incorrect. The sentence should read as follows.

"To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on *October 6, 2002*...."

In the fourth paragraph of the preamble to §11.803, the deadline to submit comments, "September 6, 2002" is incorrect. The sentence should read as follows.

"To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on *October 6, 2002*...."

TRD-200205948

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various flex percentages from -2% to +105% by coverage and territory. The overall rate change is +8.8%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 7, 2002.

TRD-200205920
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 10, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property and Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various flex percentages from +30% to +125% by coverage and territory. The overall rate change is +9.6%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 7, 2002.

TRD-200205921
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 10, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The American Alternative Insurance Corporation proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages for all territories of -19.5% for Ambulance classes 7913 & 1714 and -51.1% for Fire Department classes 7908 & 7909 under Physical Damage coverage; -57.5% for Antique, Collectible and Special Interest Auto class 9620 for all coverages; and -15% for all other classes under all coverages and territories. The overall rate change is +6.0%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 9, 2002.

TRD-200205933
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 11, 2002

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Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

One proposal is to amend the TAIPA Plan of Operation, Section 11 and Sections 12.A.1.b and 14.A.3 to conform the agents' license types to be consistent with current statutory agents' license types. References to agents' licenses will be changed from Local Recording Agents and Group 2.2 (county mutual) agents' licenses to General Lines - Property and Casualty, Limited Lines - Property and Casualty, and County Mutual Agent licenses.

Another proposal is to amend Sections 14.A.3 and 14.E.5 to change "Texas Association of Independent Insurance Agents" to its current name, "Independent Insurance Agents of Texas."

The remaining proposal is to amend Section 14.F.1 to change the definition of a quorum for holding a Governing Committee meeting. The fifteen-member Governing Committee and the Manager administer TAIPA pursuant to its Plan of Operation. The current rule states that ten members must be present and does not require the presence of a public member. The proposed amendment provides that the presence of nine members, including at least one public member, constitutes a quorum. A survey was conducted of the other states to determine their

quorum requirements for similar automobile insurance plans. The proposed amendment is supported by information from this survey.

This filing is subject to Department approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-0702-29).

TRD-200205919
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 10, 2002

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of ACN Group, Inc., a foreign third party administrator. The home office is Minnetonka, Minnesota.

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-200205934
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 11, 2002

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporation in Texas of Worklife Solutions, Inc., a domestic third party administrator. The home office is Austin, 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-200205937
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 11, 2002

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North Central Texas Council of Governments

Notice of Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provision of Government Code, Chapter 2254.

Through its regional solid waste management program, NCTCOG intends to seek professional consulting services for three different studies to assist with implementation of the *SEE Less Trash Regional Solid Waste Management Plan* : * Regional Rural and Underserved Areas Disposal Needs Study * Regional Construction & Demolition Debris R3 (Reduction/Reuse/Recycling) Study * Regional Stop Illegal Dumping Cost/Benefit Analysis Study

Contract Award Procedures: Each project will have an oversight subcommittee that will recommend the firm selected to perform each study. These oversight subcommittees will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board with review the recommendations made by these subcommittees, and if found acceptable, will issue contract awards.

A consultant briefing will be held on Friday, October 4, 2002, at 1:30 p.m. in NCTCOG offices. Copies of the Requests for Proposals will be available at the NCTCOG Web site: http://www.dfwinfo.com/envir.

Closing Date: Proposals must be submitted no later than 5 p.m. Central Time on Friday, October 25, 2002, to the North Central Texas Council of Governments, Department of Environmental Resources, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. Questions may be directed to Kathleen Graham, NCTCOG Senior Environmental Planner, 817/695-9217 or kgraham@dfwinfo.com.

TRD-200205945
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 11, 2002

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Texas Department of Protective and Regulatory Services

Cancellation of Request for Proposal--Services to At-Risk Youth (STAR) Program--Dallas County

The Texas Department of Protective and Regulatory Services is canceling the Request for Proposal (RFP) for the Services to At-Risk Youth (STAR) Program in Dallas county. The RFP appeared in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8672). The STAR Program will be procured statewide in Fiscal Year 2004.

TRD-200205918
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: September 10, 2002

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Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On September 5, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Local Telephone Service Company, 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 2002) (PURA). The joint application has been designated Docket Number 26598. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26598. 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 October 8, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 26598.

TRD-200205862
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2002

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

On August 29, 2002, Extel 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 No. 60478. Applicant intends to remove the resale-only restriction.

The Application: Application of Extel for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26555.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 25, 2002. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26555.

TRD-200205835
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 5, 2002

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Notice of Application for Extension/Waiver of Requirements in Public Utility Commission of Texas Substantive Rule §26.130

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 30, 2002, for good cause exception of the requirements in the commission's Substantive Rule §26.130(m).

Docket Title and Number: Application of Worldcom, Inc. for Extension/Waiver of the commission's. Substantive Rule §26.130(m), Slamming Complaint Reporting for Calendar Year 2002. Docket Number 26568.

The Application: WorldCom, Inc. (WCom) requests a good cause exception to filing the Texas slamming report by August 31, 2002. WCom seeks a 90-day extension of the August 31, 2002 due date, until November 30, 2002. WCom stated that its reporting systems currently do not permit it to report the information on a state-specific basis and thus cannot produce the required Texas report by August 31, 2002. According to WCom, an extension until November 30, 2002, would permit WCom sufficient time to make the system changes necessary to produce the Texas report. Alternatively, WCom requested a waiver of the commission's Substantive Rule §26.130(m) reporting requirement.

On or before September 30, 2002, persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 26568.

TRD-200205910
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2002

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Notice of Application for Waiver to Requirements in the Public Utility Commission Substantive Rule §25.181

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 30, 2002, for

waiver of the limitation on energy efficiency incentive payments imposed by the commission's Substantive Rule §25.181(h)(3).

Docket Title and Number: Application of West Texas Utilities Company (WTU) for Waiver of the Limitation on Energy Efficiency Incentive Payments Imposed by the commission's Substantive Rule §25.181(h)(3). Docket Number 26571.

The Application: The commission's Substantive Rule §25.181(h)(3) limits the amount that an individual energy efficiency service provider (EESP) and its affiliates may receive to no more than 20% of the total incentive payments available for a particular standard offer contract or market transformation program. The rule permits a utility to petition the commission for a waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation. According to the company, WTU's budget for incentive payment under its 2002 Hard-to-Reach Standard Offer Program (HTR SOP) is $154,000, which limits the incentives available to any one EESP to $30,800. The company stated that currently only two sponsors are actively participating in the program, and only $61,600 in incentives have been reserved. In order to accomplish its goal, the company seeks to amend the applicable text in its HTR SOP to remove the 20% limitation on the incentives any one sponsor may receive.

On or before September 30, 2002, persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 26571.

TRD-200205911
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2002

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Notice of Application for Withdrawal of Service Pursuant to Public Utility Commission of Texas Substantive Rule §26.208

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 4, 2002, for withdrawal of service offering pursuant to the commission's Substantive Rule §26.208(h).

Docket Title and Number: Application of Valor Telecommunications of Texas, Inc. to Withdraw Certain Features Packages Pursuant to P.U.C. Substantive Rule §26.208. Docket Number 26593.

The Application: On September 4, 2002, Valor Telecommunications of Texas, LP (Valor) filed an application to withdraw several custom calling service feature packages. Valor asserted that the feature packages listed in Schedule A-1, 1st Revised Sheet No. 30 of its Texas General Exchange Tariff Number 2, have had no subscribers since before September 1, 2000, and that there are no current subscribes for this service.

On or before October 10, 2002, persons wishing to comment on this application should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-298. All correspondence should refer to Docket Number 26593.

TRD-200205917
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2002

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Notice of Interconnection Agreement

On March 14, 2002, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and NOW Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25597. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25597. 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 October 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones

(TTY) may contact the commission at (512) 936-136. All correspondence should refer to Docket Number 25597.

TRD-200205864
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2002

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Notice of Interconnection Agreement

On September 3, 2002, Leval 3 Communications, LLC and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26579. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26579. 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 October 4, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 26579.

TRD-200205827
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 5, 2002

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Notice of Interconnection Agreement

On September 4, 2002, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint, and Texas AM-Tel I, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26594. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26594. 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 October 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas

78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 26594.

TRD-200205836
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 5, 2002

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Notice of Interconnection Agreement

On September 5, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Winstar Communications, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26602. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 10 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 26602. 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 October 8, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 26602.

TRD-200205863
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2002

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Notice of Workshop on Competitive Metering

The Public Utility Commission of Texas (commission) will hold a workshop regarding competitive metering and the implementation of Public Utility Regulatory Act §39.107, on Tuesday, October 1, 2002, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 26359, *Rulemaking to Address Competitive Metering* has been established for this proceeding. The workshop will be a continuation of the commission's September 17, 2002 workshop in this project.

Questions concerning the workshop or this notice should be referred to Connie Corona, Director, Electric Policy Analysis, Policy Development Division at (512) 936- 7212. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200205925
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 10, 2002

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Texas Rehabilitation Commission

Notice of Contract Award

The Texas Rehabilitation Commission announces contract awards in connection with the Requests for Proposals published in the *Texas Register* and the Electronic State Business Daily on March 29, 2002:

Contract number 977217 (9/1/02-8/31/03) for a Center for Independent Living in Randall and Potter County to Panhandle Independent Living Center in the amount of $105,569;

Contract number 977249 (9/1/02-8/31/03) for a Center for Independent Living in Lubbock County to Lifetime Independence for Everyone (LIFE) in the amount of $199,900;

Contract number 977216 (10/1/02-8/31/03) for a Direct Client Services Program in Randall and Potter County to Panhandle Independent Living Center in the amount of $15,000; and

Contract number 977248 (10/1/02-8/31/03) for a Direct Client Services Program in Lubbock County to Lifetime Independence for Everyone (LIFE) in the amount of $15,000.

TRD-200205924
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Filed: September 10, 2002

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Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from library imaging firms to undertake the construction of a database to be used for a collaborative web project.

Stephen F. Austin State University, Sam Houston State University and the Huntsville, Texas Public Library desire to have photos, loose documents, bound materials, maps and oversized material and three-dimensional objects scanned through various means to construction a database including metadata creation for the imaged files and the creation of Encoded Archival Descriptor (EAD) finding aids. All scanning must be performed on-site at the locations specified. The selected firm will be required to load the database on the Stephen F. Austin State University Ralph W. Steen Library server and perform staff training as required to manage the database. Database construction, installation and staff training must be completed no later than January 30, 2003. Because the value of the contract is expected to exceed $100,000, a HUB Subcontracting Plan must be submitted with the proposal.

The University intends to make the selection of a firm by October 8, 2002. The firm selected for this project must evidence, through previous experience with similar projects or through a comprehensive set of references, the skills, qualifications, knowledge, and experience necessary to complete the project on a timely basis subject to the University's requirements and available funds. The firm will be chosen based on the proposal determined to represent the best value, considering the information requested, the size of the project and the time frame within which it is to be completed.

Proposals must be received in the office of Diana Boubel, Director of Purchasing & Inventory, Stephen F. Austin State University, P. O. Box 13030, 2124 Wilson Drive, Nacogdoches, Texas 75962 by 5:00 pm, October 7, 2002 in order to be considered. Please contact Diana Boubel (936) 468-4037 for detailed specifications and HUB Subcontracting Plan Requirements.

TRD-200205852
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 6, 2002

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to assist in reviewing analyzing and recommending program solutions for positively impacting the University's freshman retention rates

Information may be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., October 3, 2002.

TRD-200205820
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: September 4, 2002

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Texas Department of Transportation

Notice of Public Hearings for Proposed Central Texas Regional Mobility Authority

The Texas Department of Transportation (department) will conduct two public hearings to receive comments on the proposed formation of the Central Texas Regional Mobility Authority ("Central Texas RMA") by Travis and Williamson Counties (the "Counties").

On September 3, 2002, the Counties filed a petition requesting authorization from the Texas Transportation Commission to form the Central Texas RMA. As proposed the Central Texas RMA would encompass boundaries of the two counties, and would be governed by a board of directors of up to seven members. Three of the board members would be appointed by Williamson County Commissioners Court and three board members would be appointed by Travis County Commissioners Court. In addition to the board members appointed by the Counties, the presiding officer of the board will be appointed by the Governor.

The petition identifies the proposed US 183-A turnpike as the initial project to be developed by the Central Texas RMA. Proposed US 183-A is an approximately 12-mile long turnpike project located in Williamson County, beginning at existing US 183 at State Highway 45 and extending northward, parallel to (and east of) existing US 183 until the roadway reconnects with US 183 near the San Gabriel River, approximately three miles north of the City of Leander. The Central Texas RMA may pursue or financially support other projects in the future, including without limitation State Highway 45 Southeast, a proposed seven-mile turnpike project located in Travis County beginning at IH 35 and extending eastward to the intersection of SH 130 and US 183.

Pursuant to Title 43 Texas Administrative Code, §26.12, the department will hold public hearings at the dates, times, and locations indicated to receive public comments and assess the level of public support concerning the proposed Central Texas RMA:

October 8, 2002, 6:00 p.m., Texas Department of Transportation

200 East Riverside Drive, Room 1.A.1

Austin, Texas

October 9, 2002, 6:00 p.m., Williamson County Cedar Park Annex

Community Meeting Room

350 Discovery Blvd., 2nd Floor

Cedar Park, Texas

All interested citizens are invited to attend these public hearings and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing or written comments may be submitted by regular postal mail. To be included in the official record of the public meeting, written comments must be received by 5:00 p.m. on October 19, 2002. Written comments should be mailed to: Phillip Russell, P.E., Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who

are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Randall Dillard at 463-8588 at least two business days prior to the hearing they wish to attend so that appropriate arrangements can be made.

TRD-200205932
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 11, 2002

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Public Hearing Notice--Access Management Rules

In accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001, Subchapter B, the Texas Department of Transportation proposed the repeal of §§11.50-11.53, concerning access driveways to state highways, new §§11.50-11.55, concerning access management, and amendments to §15.54, concerning federal, state, and local participation in highway improvement projects. The repeals, new sections, and amendments were published in the June 14, 2002, issue of the Texas Register (27 TexReg 5134-5141). The original comment period for the proposed rules ended on July 15, 2002. The department is now reopening the comment period for the proposed rules and will conduct three public hearings to receive oral and written comments. Each public hearing will begin at 6:00 p.m. on the following dates and at the following locations:

October 8, 2002: Irving Arts Center, 3333 North MacArthur Boulevard, Irving, Texas 75062.

October 9, 2002: TxDOT Houston District Office, 7721 Washington Avenue, Houston, Texas, 77251.

October 10, 2002: Dewitt C. Greer State Highway Building, 125 E. 11th Street, First Floor, Austin, Texas, 78701.

These public hearings will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 5:30 p.m. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director of the Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2483, (512) 463-8588, at least three working days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed sections may be submitted to Ken Bohuslav, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5 p.m. on October 21, 2002.

TRD-200205949
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 11, 2002

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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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