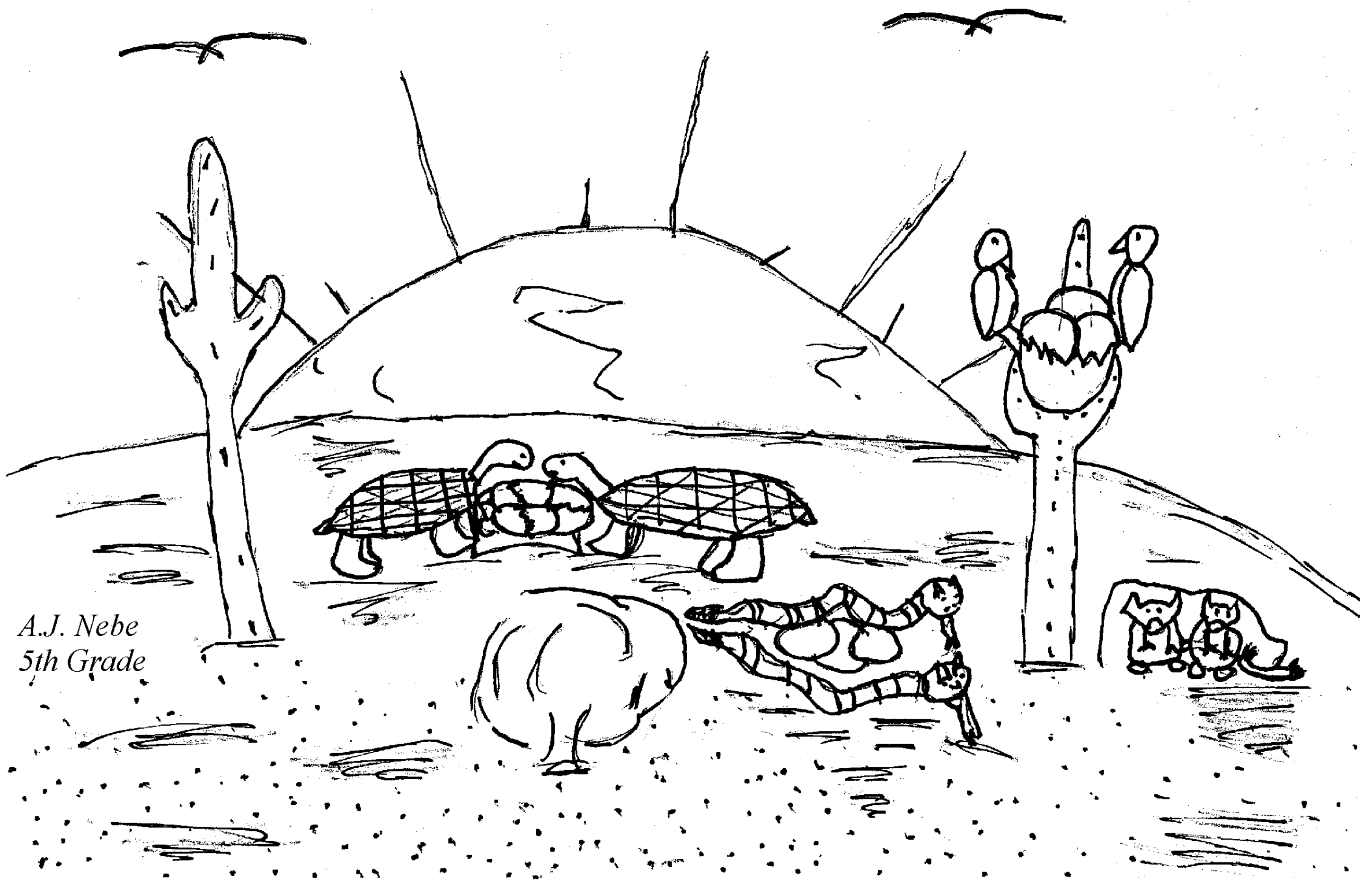
Texas Register

Volume 27 Number 40 October 4, 2002 Pages 9225-9494



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*.

***Texas Register,* (ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $200. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

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

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

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

Secretary of State - Gwyn Shea
Director - Dan Procter

Staff
Dana Blanton
Leti Benavides
Carla Carter
Melissa Dix
Kris Hogan
Roberta Knight
Jill Ledbetter
Diana Muniz-Franklin
Luis Sanchez
LaKiza Fowler-Sibley

ATTORNEY GENERAL

Opinions 9233

Request for Opinion 9233

EMERGENCY RULES

TEXAS DEPARTMENT OF AGRICULTURE

COTTON PEST CONTROL

4 TAC §20.22 9235

TEXAS COMMISSION ON THE ARTS

A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2 9236

PROPOSED RULES

TEXAS BUILDING AND PROCUREMENT COMMISSION

EXECUTIVE ADMINISTRATION DIVISION

1 TAC §111.14 9237

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

1 TAC §§371.200, 371.201, 371.203, 371.204, 371.206, 371.208, 371.210 9241

1 TAC §§371.202, 371.205, 371.207, 371.209, 371.211 9244

TEXAS COMMISSION ON THE ARTS

A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2 9245

TEXAS EDUCATION AGENCY

STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.5 9245

TEXAS STATE BOARD OF BARBER EXAMINERS

PRACTICE AND PROCEDURE

22 TAC §51.3 9250

22 TAC §51.59 9250

22 TAC §51.141 9251

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

APPLICATIONS AND APPLICANTS

22 TAC §71.5, §71.7 9252

LICENSES AND RENEWALS

22 TAC §73.7 9253

PROVISIONAL LICENSURE

22 TAC §79.1 9253

TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

PRACTICE

22 TAC §322.2 9254

LICENSING PROCEDURE

22 TAC §329.6 9254

TEXAS REAL ESTATE COMMISSION

PROVISIONS OF THE REAL ESTATE LICENSE ACT

22 TAC §535.2 9255

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

MEDICAID PROGRAMS

25 TAC §409.501 9256

MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

25 TAC §§419.551 - 419.563, 419.565 - 419.580, 419.582 - 419.585 9258

25 TAC §419.709 9275

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PUBLIC DRINKING WATER

30 TAC §290.45 9276

TEXAS WATER DEVELOPMENT BOARD

FINANCIAL ASSISTANCE PROGRAMS

31 TAC §363.2 9286

31 TAC §363.502, §363.510 9286

DRINKING WATER STATE REVOLVING FUND

31 TAC §371.2 9288

31 TAC §§371.21, 371.25, 371.26 9288

DRINKING WATER STATE REVOLVING FUND

31 TAC §371.13 9290

31 TAC §371.72 9291

TEXAS YOUTH COMMISSION

ADMISSION AND PLACEMENT

37 TAC §85.29 9291

37 TAC §85.43 9295

37 TAC §85.43 9295

TREATMENT

37 TAC §87.85 9297

PROGRAM SERVICES
37 TAC §91.81 9298
SECURITY AND CONTROL
37 TAC §97.29 9298
37 TAC §97.43 9299
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
GENERAL PROVISIONS
37 TAC §151.4 9301
TEXAS DEPARTMENT OF HUMAN SERVICES
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
40 TAC §19.2308 9302
TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES
CONTRACTED SERVICES
40 TAC §§732.202, 732.229, 732.247 9303
WITHDRAWN RULES
RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION
16 TAC §3.78 9305
ADOPTED RULES
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES
1 TAC §§351.17, 351.19, 351.21, 351.23 9307
MEDICAID REIMBURSEMENT RATES
1 TAC §355.451 9307
1 TAC §§355.701, 355.743 - 355.746....9308
1 TAC §355.8021 9308
1 TAC §355.8101 9310
1 TAC §355.8261 9310
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
ADMINISTRATION
10 TAC §1.2 9315
TEXAS EDUCATION AGENCY
CHARTERS
19 TAC §100.101, §100.105 9316
BUDGETING, ACCOUNTING, AND AUDITING
19 TAC §109.1 9317
19 TAC §109.23, §109.25 9318
19 TAC §109.51, §109.52 9318
TEXAS BOARD OF PROFESSIONAL ENGINEERS
PRACTICE AND PROCEDURE
22 TAC §131.51 9319
22 TAC §131.52 9319
22 TAC §131.53 9320
22 TAC §131.54 9320
22 TAC §131.55 9321
22 TAC §131.55 9321
22 TAC §131.71 9322
22 TAC §131.72 9322
22 TAC §131.81 9323
22 TAC §131.111 9325
22 TAC §131.167 9326
TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS
LICENSING PROCEDURE
22 TAC §329.1 9326
22 TAC §329.5 9327
PRACTICE SETTINGS FOR PHYSICAL THERAPY
22 TAC §346.3 9327
TEXAS DEPARTMENT OF INSURANCE
LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
28 TAC §3.3703 9328
HEALTH MAINTENANCE ORGANIZATIONS
28 TAC §11.901 9339
TEXAS WORKERS' COMPENSATION COMMISSION
WORKERS' COMPENSATION COVERAGE FOR STATE EMPLOYEES
28 TAC §109.1 9349
HAZARDOUS EMPLOYER PROGRAM
28 TAC §164.9 9349
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ADVISORY COMMITTEES AND GROUPS
30 TAC §5.1, §5.2 9352
30 TAC §§5.3 - 5.5, 5.7, 5.10, 5.14....9353
30 TAC §5.20, §5.21 9353
RULEMAKING

30 TAC §20.19 9354

WATER QUALITY FEES

30 TAC §§21.1 - 21.4....9356

ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

30 TAC §50.131 9362

REGIONAL ASSESSMENTS OF WATER QUALITY

30 TAC §§220.1 - 220.7....9364

30 TAC §§220.1 - 220.8....9365

30 TAC §220.21, §220.22 9365

WATER DISTRICTS

30 TAC §293.1 9369

30 TAC §293.11 9370

30 TAC §§293.42, 293.44, 293.46, 293.47, 293.51, 293.56, 293.59....9370

30 TAC §§293.81, 293.87, 293.89 9376

30 TAC §293.103 9377

30 TAC §293.113 9377

30 TAC §293.121 9377

30 TAC §293.123 9378

30 TAC §293.171 9378

30 TAC §293.201, §293.202 9378

CONSOLIDATED PERMITS

30 TAC §§305.501 - 305.507....9379

TEXAS PARKS AND WILDLIFE DEPARTMENT

FINANCE

31 TAC §53.100 9380

WILDLIFE

31 TAC §65.7 9380

31 TAC §65.8 9380

31 TAC §65.602, §65.608 9381

TEXAS WATER DEVELOPMENT BOARD

FINANCIAL ASSISTANCE PROGRAMS

31 TAC §§363.601 - 363.604....9385

31 TAC §363.613 9385

31 TAC §§363.1001 - 363.1017....9385

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.309, §3.350 9386

34 TAC §3.318 9386

34 TAC §3.354 9386

34 TAC §3.372 9387

TEXAS DEPARTMENT OF HUMAN SERVICES

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

40 TAC §§19.1303, 19.1304, 19.1306 9388

40 TAC §19.1402 9388

40 TAC §19.2609 9389

MEDICAID HOSPICE PROGRAM

40 TAC §30.62 9389

CONTRACTING FOR COMMUNITY CARE SERVICES

40 TAC §49.9 9391

TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHILD PROTECTIVE SERVICES

40 TAC §700.1109 9392

GENERAL ADMINISTRATION

40 TAC §702.1201, §702.1203 9392

24-HOUR CARE LICENSING

40 TAC §720.29 9392

LICENSING

40 TAC §745.37 9393

40 TAC §§745.129, 745.141, 745.143 9394

40 TAC §745.141 9394

TEXAS WORKFORCE COMMISSION

CHILD CARE AND DEVELOPMENT

40 TAC §809.92 9395

40 TAC §809.101, §809.103 9395

40 TAC §809.121 9395

UNEMPLOYMENT INSURANCE

40 TAC §815.111 9396

40 TAC §815.111 9396

40 TAC §815.132 9396

EXEMPT FILINGS

Texas Department of Insurance

Final Action on Rules 9397

RULE REVIEW

Agency Rule Review Plan--Revised

Texas Department of Health 9399

Proposed Rule Reviews

Texas State Library and Archives Commission 9399
Texas Workers' Compensation Commission 9399

Adopted Rule Reviews

Texas Motor Vehicle Board....9399
Texas Workers' Compensation Commission 9400

TABLES AND GRAPHICS

....9401

IN ADDITION

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program....9435

Comptroller of Public Accounts

Notice of Intent to Amend Contract 9435

Office of Consumer Credit Commissioner

Notice of Rate Ceilings....9435

Texas Education Agency

Request for Applications Concerning the Public Charter Schools Start-Up Grant Applications for Generation Eight 9436

Request for Proposals Concerning Evaluation of Education Technology Pilot Projects 9436

Request for Proposals Concerning Fiscal Note Production Services 9437

Commission on State Emergency Communications

Proposed Distribution Percentages for Fiscal Year 2003....9437

Texas Engineering Extension Service

Notice Per US Department of Justice State Domestic Preparedness Program 9450

Texas Commission on Environmental Quality

Enforcement Orders....9450

Notice of Application and Preliminary Decision for Hazardous Waste Permits 9453

Notice of Application and Preliminary Decision for Hazardous Waste Permits 9454

Notice of Application and Preliminary Decision for Hazardous Waste Permits 9454

Notice of Application and Preliminary Decision for Industrial Waste Permits 9455

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit....9456

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit....9456

Notice of Application for Hazardous Waste Permit/Compliance Plan 9457

Notice of Water Quality Applications....9458

Proposed Enforcement Orders 9461

Texas Department of Health

Correction of Error....9464

Notice of Emergency Cease and Desist Order on Friendswood Doctors of Chiropractic 9464

Notice of Emergency Cease and Desist Order on Stafford Chiropractic Clinic....9464

Notice of Public Hearing on Proposed Immunization Registry (ImmTrac) Rules....9464

Notice of Revocation of Certificates of Registration....9465

Notice of Revocation of Radioactive Material Licenses 9465

Texas Health and Human Services Commission

Correction of Error....9465

Texas Department of Insurance

Company Licensing 9465

Notice....9465

Notice of Public Hearing 9466

Third Party Administrator Applications 9466

Texas Lottery Commission

Instant Game Number 320 "Cash Bounty"....9466

Instant Game Number 325 "Instant Cash"....9470

Instant Game Number 328 "Super Lucky 7's" 9474

North Central Texas Council of Governments

Request For Proposals to Collect Traffic Data on Limited-Access Highways in the Dallas-Fort Worth Metropolitan Area Via Remote Sensing 9479

North Texas Workforce Development Board

Workforce Investment Act (WIA) Providers of Training Services 9480

Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement....9480

Notice of Amendment to Interconnection Agreement 9481

Notice of Amendment to Interconnection Agreement 9481

Notice of Amendment to Interconnection Agreement....9482

Notice of Amendment to Interconnection Agreement....9482

Notice of Amendment to Interconnection Agreement 9483

Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line 9483

Notice of Application for Amendment to Service Provider Certificate of Operating Authority 9484

Notice of Application for an Amendment to a Certificate of Convenience and Necessity 9484

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority 9484

Notice of Application of Filing Made Pursuant to Substantive Rule §26.208 9484

Notice of Interconnection Agreement...9485

Notice of Interconnection Agreement...9485

Notice of Interconnection Agreement...9486

Notice of Interconnection Agreement...9486

Notice of Interconnection Agreement...9487

Texas Department of Transportation

Public Notice - Aviation..9487

Record of Decision 9487

The University of Texas System

Consultant Proposal Request 9491

Notice of Intent to Seek a Major Consulting Services Contract....9492

Texas Water Development Board

Request for Statements of Interest 9492

Open Meetings

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0557

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

Re: Whether a member of a school district board of trustees may serve as a member of the board of directors of a groundwater conservation district with a population of less than 50,000 (RQ-0531-JC)

S U M M A R Y

A member of a school district board of trustees is not rendered ineligible by virtue of section 36.051(b) of the Water Code to serve as a member of the board of directors of a groundwater conservation district with a population of less than 50,000. Nonetheless, where the geographical boundaries of the school district and the groundwater conservation district overlap, and where both have taxing authority, a member of the school district board of trustees is barred by the "conflicting loyalties" aspect of the common-law doctrine of incompatibility from simultaneously serving as a member of the board of directors of the groundwater conservation district.

Opinion No. JC-0558

The Honorable Frank Madla, Chair, Intergovernmental Relations Committee, Texas State Senate, P.O. Box 12068 Austin, Texas 78711-2068.

Re: Whether a provision of the nepotism statute prohibits a city commissioner from deliberating on a merit salary increase for his sibling, and related question (RQ-0532-JC)

S U M M A R Y

Section 573.062(b) of the Government Code prohibits a city commissioner from participating in a deliberation regarding a merit salary increase for his sibling; and if the city commissioner participates in such a deliberation, he may be found to have violated the statute. Other city commissioners would not violate section 573.084 of the Government Code, which makes a violation of section 573.062(b) a criminal offense, by merely voting for a merit salary increase for a fellow city commissioner's sibling after being involved in an earlier deliberation in which the fellow city commissioner participated in violation of section 573.062(b).

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

TRD-200206238
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 25, 2002

Request for Opinion

RQ-0604

The Honorable Tony Goolsby Chair, Committee on House Administration, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910.

Re: Civil service status of various employees of a municipal fire department (Request No. 0604-JC)

Briefs requested by October 18, 2002

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

TRD-200206239
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 25, 2002

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for Pest Management Zone 2 (Zone 2), Area 1, and a portion of Pest Management Zone 2, Area 2. A prior emergency amendment filed by the department on September 12, 2002, granted an extension until September 28, 2002, for all of Jim Wells County and also extended the destruction deadline for all of Zone 2, Area 3 to September 28. That emergency amendment is now being amended to extend the cotton destruction deadline for the areas covered by Zone 2 , Area 1 that includes Webb and Duval counties, and that portion of Zone 2, Area 2, including all of Nueces and Kleberg counties and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

The department is acting on behalf of cotton farmers in Zone 2, Area 1, for Webb and Duval County; and Zone 2, Area 2, which includes Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

The current cotton destruction deadline is September 1 for Zone 2, Area 1, which will be extended through September 28. The current destruction deadline for cotton in Zone 2, Area 2 is September 1 for Kleberg, Nueces, and northern Kenedy County above an east-west line through Katherine and Armstrong, Texas. The destruction deadline will be extended through September 28, 2002 for that portion of Area 2. The remaining portion of Area 2, which includes Jim Wells County currently has a deadline of September 28. The department believes that changing the cotton destruction date is both necessary and appropriate. This extension is effective only for the 2002 crop year.

Excessive amounts of rainfall have occurred across the cotton growing area of these two zones, preventing cotton producers from completing harvest and destruction of hostable cotton in a timely manner. A failure to act to extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers in the counties in these zones and the state's economy.

The emergency amendment to §20.22(a) changes the date for cotton stalk destruction for Webb and Duval County, located in Zone 2, Area 1, and the remainder of Zone 2, Area 2 which includes Nueces and Kleberg County and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas through September 28, 2002.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall periodically be performed to prevent the presence of fruiting structures. Destruction of all cotton plants in Zones 9 and 10 shall be accomplished by shredding and plowing and completely burying the stalk. Soil should be tilled to a depth of 2 or more inches in Zone 9 and to a depth of 6 or more inches in Zone 10.

Figure: 4 TAC §20.22(a)

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on September 18, 2002.

TRD-200206122
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: September 18, 2002
Expiration Date: October 1, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2

The Texas Commission on the Arts adopts on an emergency basis amendments to §35.1 and 35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes amendments to §35.1 and §35.2.

The purpose of the amendments is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 2002.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

The amendments are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. A Guide to Operations.

The commission adopts by reference A Guide to Operations (revised September 2002). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§35.2. A Guide to Programs and Services.

The commission adopts by reference A Guide to Programs and Services (revised September 2002). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206172
Ricardo Hernandez
Executive Director
Texas Commission on the Arts
Effective Date: September 23, 2002
Expiration Date: January 21, 2003
For further information, please call: (512) 463-5535

♦ ♦ ♦

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 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §111.14

The Texas Building and Procurement Commission proposes amendments to Title 1, T.A.C., Chapter 111, Subchapter B, §111.14 (relating to Subcontracts).

Amendments are proposed to delete language, which references a respondent's ability to perform all the subcontracting opportunities identified by the agency. If it has been determined that subcontracting opportunities are probable for a contract with an expected value of $100,000 or more, each respondent shall submit a HUB subcontracting plan in accordance with Texas Government Code, Chapter 2161, Subchapter F and Title 1, T.A.C., §111.14.

In addition, amendments are proposed to provide further clarification in determining good faith effort, as well as to provide agencies additional latitude in requesting documentation to support good faith effort.

Cindy Reed, Deputy Executive Director, determines that for the first five-year period the rule is in effect, there will be a moderate increase in the administrative costs required to respond to state contracting opportunities, as well as award state contracts when the expected value is $100,000 or more and the contracting agency has determined that subcontracting opportunities are probable.

If the expected value of a state contract is $100,000 or more and the contracting agency determines that there are no opportunities for subcontracting, there will be no additional administrative burden for respondents to state agency procurement opportunities.

Cindy Reed further determines that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of enforcing the rule will be in compliance with Texas Government Code, Chapter 2161, relating to the Historically Underutilized Business Program. Respondents to state contracting opportunities will experience moderate increases in administrative costs with regard to responding to state contracting opportunities where the expected contract value is $100,000 or more and the contracting agency has determined that subcontracting opportunities are probable.

Comments on the proposals may be submitted to Juliet King, Legal Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2161.002, and 2161.253, which provide the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the section.

The following code is affected by this rule: Government Code, Title 10, Subtitle D, Chapter 2161.

§111.14. Subcontracts.

(a) Requirement for HUB subcontracting plans. In accordance with [~~the~~] Texas Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if [~~in making the determination of whether~~] subcontracting opportunities are probable under the contract:

(A) Use the HUB participation goals in §111.13 of this title (relating to Annual Procurement Utilization Goals);

(B) Research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the commission, for HUBs that may be available to perform the contract work;

(C) In addition [~~Additionally~~], determination of subcontracting opportunities may include, but is not limited to, the following:

(i) contacting other state and local agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities; and

(ii) reviewing the history of similar agency purchasing transactions.

(2) If subcontracting opportunities are probable, each agency's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities for $100,000 or more shall state that probability and require a HUB subcontracting plan. Respondents[~~Accordingly, potential contractor/vendor responses~~] that do not include a [~~completed~~] HUB subcontracting plan shall be rejected due to material failure to comply with advertised specifications in accordance with §113.6 (a) of this

title (relating to Bid Evaluation and Award). The plan shall include goals established pursuant to §111.13 of this title (relating to Annual Procurement Utilization Goals).

(b) Development and evaluation of HUB subcontracting plans. A state agency shall require a respondent [~~potential contractor vendor~~] to state whether it is a Texas certified HUB. Respondents [~~Potential contractors/vendors~~] shall follow, but are not limited to, procedures in subsection (b)(1) of this section when developing the HUB subcontracting plan. The HUB subcontracting plan shall include the form provided by the agency identifying the subcontractors that will be used during the course of the contract, the expected percentage of work to be subcontracted and the approximate dollar value of that percentage of work. The respondent [~~potential contractor/vendor~~] shall provide all additional information required by the agency.

(1) Evidence of good faith effort in developing a HUB subcontracting plan includes, but is not limited to, the following procedures:

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Notify HUBs of the work that the respondent [~~potential contractor/vendor~~] intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's [~~contractor's/vendor's~~] bid. The respondent [~~potential contractor/vendor~~] shall provide potential HUB subcontractors reasonable time to respond to the respondent's [~~potential contractor/vendor's~~] notice. "Reasonable time to respond" in this context is no less than five working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file. The respondent [~~potential contractor/vendor~~] shall effectively use the commission's Centralized Master Bidders List, the HUB Directory, Internet resources, and other directories as identified by the commission or agency when searching for HUB subcontractors. Respondents [~~Contractors/Vendors~~] may rely on [~~upon~~] the services of minority, women, and community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to perform all or select elements of the HUB subcontracting plan. The respondent [~~potential contractor/vendor~~] shall provide the notice described in this subsection to three or more HUBs that perform the type of work required. On [~~Upon~~] request, the respondent [~~potential contractor/vendor~~] shall provide official written documentation (i.e. phone logs, fax transmittals, etc.) to demonstrate compliance with the notice required in this subsection.

(C) Provide written justification of the selection process if a non HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the best value responsive bidder to a competitive bid invitation, but is not selected.

(2) In addition, evidence of good faith effort in developing a HUB subcontracting plan may include:

(A) [~~(D)~~] Advertise HUB subcontracting opportunities in general circulation, trade association, and/or minority/woman focused[~~focus~~] media concerning subcontracting opportunities.

(B) [~~(E)~~] Encourage a selected noncertified minority or woman owned business subcontractor to apply for certification by the commission in accordance with the procedures set forth in §111.17 of this title (relating to Certification Process).

[~~(2) If the contract is a lease contract, the lessor shall comply with the requirements of this section from and after the occupancy date provided in the lease, or such other time as may be specified in the invitation for bid for the lease contract.~~]

(3) In making a determination if [~~whether~~] a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may [~~shall~~] require the respondent [~~potential contractor/vendor~~] to submit supporting documentation explaining how[~~in what ways~~] the respondent[~~potential contractor/vendor~~] has made a good faith effort according to each criterion listed in subsection (b)(1) of this section. The documentation shall include at least the following:

(A) if [~~whether~~] the respondent[~~potential contractor/vendor~~] divided the contract work into reasonable lots or portions consistent with prudent industry practices;

(B) if [~~whether~~] the respondent's [~~potential contractor/vendor's~~] notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing reasonable time for HUBs to participate effectively;

(C) if [~~whether~~] the respondent[~~potential contractor/vendor~~] negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

(D) if [~~whether~~] the respondent[~~potential contractor/vendor~~] documented reasons for rejection of a HUB or met with the rejected HUB to discuss the rejection;

[~~(E) whether the potential contractor/vendor advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities; and~~]

[~~(F) whether the potential contractor/vendor assisted noncertified HUBs to become certified.~~]

(4) A respondent's [~~potential contractor/vendor's~~] participation in a Mentor Protege Program under the Texas Government Code §2161.065, and the submission of a protege as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protege. When submitted, state agencies may accept a Mentor Protege Agreement that has been entered into by the respondent [~~potential contractor/vendor~~] (mentor) and a certified HUB (protege). The agency shall consider the following in determining the respondent's [~~potential contractor/vendor's~~]good faith effort:

(A) if [~~whether~~] the respondent [~~potential contractor~~] has entered into a fully executed Mentor Protege Agreement that has been registered with the commission prior to submitting the plan, and

(B) if [~~whether~~] the respondent's [~~potential contractor/vendor's~~] HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protege.

(5) A HUB subcontracting plan, which meets or exceeds HUB participation goals in §111.13 of this title (relating to Annual Procurement Utilization Goals) for all subcontracting opportunities, constitutes a good faith effort under this section.

(6) [~~(5)~~] The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of the agency's contract. No changes shall be made to an accepted HUB subcontracting plan prior to its incorporation into the contract. State agencies may [~~shall~~] review the supporting documentation

submitted by the respondent [potential contractor/vendor] to determine if a good faith effort has been made in accordance with this section and the bid specifications. If the agency determines that a submitted HUB subcontracting plan was not developed in good faith, the agency shall treat the lack of good faith as a material failure to comply with advertised specifications, and the subject bid or other response shall be rejected. The reasons for rejection shall be recorded in the procurement file.

[(6) If the potential contractor/vendor can perform all the subcontracting opportunities identified by the agency, a statement of the potential contractor's/vendor's intent to complete the work with its employees and resources without any subcontractors will be submitted with the potential contractor's/vendor's bid, proposal, offer, or other expression of interest. If the potential contractor/vendor is selected and decides to subcontract any part of the contract after the award, as a provision of the contract, the contractor/vendor must comply with provisions of this section relating to developing and submitting a subcontracting plan before any modifications or performance in the awarded contract involving subcontracting can be authorized by the state agency. If the selected contractor/vendor subcontracts any of the work without prior authorization and without complying with this section, the contractor/vendor would be deemed to have breached the contract and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, state law and this section. Agencies may report nonperformance relative to its contracts to the commission in accordance with Chapter 113, Subchapter F of this title (relating to the Vendor Performance and Debarment Program).]

(c) Submission, review and determination of changes to an approved HUB subcontracting plan during contract performance. If at any time during the term of the contract, a contractor [contractor/vendor] desires to make changes to the approved subcontracting plan, the [such] proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The contractor [contractor/vendor] must comply with provisions of subsection (b) of this section relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.

(d) Determining contractor [contractor/vendor contract] compliance. The contractor [contractor/vendor] shall maintain business records documenting its compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting agency periodically and in the format required by the contract documents. During the term of the contract, the state agency shall determine whether the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a contractor [contractor/vendor] to whom a contract has been awarded to report to the agency the identity and the amount paid to its subcontractors in accordance with 111.16(c) of this title (relating to State Agency Reporting Requirements). If the contractor [contractor/vendor] is meeting or exceeding the provisions, the state agency shall maintain documentation of the contractor's [contractor's/vendor's] efforts in the contract file. If the contractor [contractor/vendor] fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the contractor of any deficiencies. The state agency shall give the contractor [contractor/vendor] an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the contractor[contractor/vendor].

(1) To determine if [In determining whether] the contractor [contractor/vendor] made the required good faith effort, the agency may not consider the success or failure of the contractor [contractor/vendor] to subcontract with HUBs in any specific quantity. The agency's determination is restricted to considering factors indicating good faith effort including, but not limited to, the following:

(A) whether the contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the contractor facilitated access to the work site, electrical power, and other necessary utilities; and

(C) whether documentation or information was provided that included potential changes in the scope of contract work.

(2) If a determination is made that the contractor [contractor/vendor] failed to implement the HUB subcontracting plan in good faith, the agency, in addition to any other remedies, may report nonperformance to the commission in accordance with Chapter 113, Subchapter F of this title (relating to Vendor Performance and Debarment Program).

(3) State agencies shall review their procurement procedures to ensure compliance with this section. In accordance with §111.26 of this title (relating to HUB coordinator responsibilities) the agency's HUB coordinator and contract administrators should facilitate institutional compliance with this section.

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

Filed with the Office of the Secretary of State on September 18, 2002.

TRD-200206114
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 463-3583

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER C. UTILIZATION REVIEW

The Health and Human Services Commission (HHSC) proposes to amend Chapter 371, concerning Medicaid Fraud and Abuse Program Integrity, Subchapter C, concerning Utilization Review, §371.200, concerning Inpatient Hospital Utilization Review Program, §371.201, concerning Case Selection Process, §371.203, concerning Texas Medical Review Program (TMRP) Review Process, §371.204, concerning TMRP Hospital Screening Criteria for TMRP and TEFRA Reviews, §371.206, concerning Denials and Recoupments for Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) Hospitals, and §371.210, concerning Inpatient Utilization Review For Hospitals Reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) Principles of Reimbursement. HHSC proposes to repeal Chapter 371, concerning Medicaid

Fraud and Abuse Program Integrity, Subchapter C, concerning Utilization Review, §371.202, concerning Contracting for Texas Medical Review Program (TMRP) or Tax Equity and Fiscal Responsibility (TEFRA) Services, §371.205, concerning Acknowledgment of Penalty Notice, §371.207, concerning Diagnostic Related Group (DRG) Changes and Adjustments, §371.209, concerning Sanctions Under the TMRP and TEFRA, and §371.211, concerning Quality of Care Review. HHSC proposes a new rule for Chapter 371, concerning Medicaid Fraud and Abuse Program Integrity, Subchapter C, concerning Utilization Review, §371.208, concerning Appeals Related to Utilization Review Department Review Decisions.

Background and Summary of Factual Basis for the Rules

The 75th Legislature, Regular Session, 1997, through Senate Bill 30, directed the transfer of Utilization Assessment and Review and all its powers, duties, functions, and programs from the Texas Department of Human Services (TDHS) to HHSC, effective September 1, 1997. Rules were officially transferred in March 2000, without language change, from Title 40 of this code to Title 1. One of the functions transferred was the review of hospital inpatient claims.

The proposed amendments, repeals, and addition of a new rule, were developed in conjunction with discussions with the Texas Hospital Association and representatives from divisions within HHSC. The proposed rule amendments reflect updated review processes and current terminology, clarify language, acknowledge a shift in agency authority, and correct grammatical errors. The proposed rules repeals eliminate redundancy. The proposed new §371.208, concerning appeals replaces the rule that was repealed in April 2000.

Section-by-Section Explanation

Proposed amendments to §371.200 reflect the change in agency authority, clarify language and terminology, and specify the federal regulations, which require the HHSC to operate a utilization review program that controls the utilization of inpatient hospital services and assesses the appropriateness and quality of those services.

Proposed amendments to §371.201 reflect the change in agency authority and clarify the process for selection of claims to review and types of claims selected for the Texas Medical Review Program (TMRP) Diagnosis Related Group (DRG) reimbursed hospitals, the Tax Equity and Fiscal Responsibility Act (TEFRA) reimbursed children's hospitals, and the LoneSTAR Select II reimbursed freestanding psychiatric hospitals.

Proposed amendments to §371.203 clarify language and terminology related to the TMRP review process, clarify the definition of medical necessity for purposes of the TMRP, TEFRA, and LoneSTAR Select II reviews, identify the change of federal agency title from Health Care Financing Administration to Centers For Medicare and Medicaid Services, and provide notification that emergency service review is not part of this review process.

Proposed amendments to §371.204 clarify the title of the rule, reflect the change in agency authority, clarify language and terminology, and clarify the definition of medical necessity for purposes of the TMRP, TEFRA, and Lone STAR Select II reviews.

Proposed amendments to §371.206 clarify the title of the rule as well as language and terminology related to the review process resulting in denials and subsequent recoupments of claims payments. In particular the amendments clarify the technical denial review process.

Proposed amendments to §371.210 clarify the title of the rule, clarify language and terminology related to the TEFRA and LoneSTAR Select II review process, and provide notification that emergency service review is not part of this review process.

Repeal of §371.202 is proposed as a result of the decision by HHSC not to contract for the performance of portions of the TMRP or TEFRA review activities.

Repeal of §371.205 is proposed based on the fact that the Acknowledgment of Penalty Notice is not reviewed as part of the utilization review process.

Repeal of §371.207 is proposed based on the fact that the DRG change and adjustment process is described in §371.203.

Repeal of §371.209 is proposed based on the fact that administrative sanctions are described in Medicaid Program Integrity Division rules.

Repeal of §371.211 is proposed based on the fact that the quality of care review process is described in §371.203.

HHSC proposes a new §371.208, concerning Appeals Related To Utilization Review Department Review Decisions. Section 371.208 was repealed in April 2000. The proposed new rule briefly describes the right of the provider to appeal a decision made by the Utilization Review Department.

Fiscal Note

Don Green, Chief Financial Officer, has determined that, for each year of the first five years the proposed rules are in effect, there will be no fiscal impact to state government. No additional costs will be borne by local governments as a result of the rules. There is no anticipated negative impact on revenues of state or local government.

Public Benefit

Mr. Don Green has also determined that for each year of the first five years the proposed rules are in effect, the public will benefit from adoption of the rules as a result of clarification of language and terminology, clarification of review processes, notification of change in agency authority, and elimination of redundancy.

Small and Micro-business Impact Analysis

The proposed rules will not result in additional costs to persons required to comply with the rules. The rules do not have any anticipated adverse effect on small or micro-businesses. The rules will not negatively affect local employment.

Regulatory Analysis

The HHSC has determined that none of the proposed rules is a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. None of the proposed rules is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has evaluated the takings impact of the proposed rules under §2007.043, Government Code. HHSC has determined that this action does not restrict or limit owners' rights to their

property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The majority of the proposed rules are administrative and do not impose any new regulatory requirements. The proposed rules are reasonably taken to fulfill requirements of state law.

Public Comment

Comments on the proposed rules may be submitted in writing to Dan McCullough, Hospital Utilization Review Manager, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas, 78711-3247, or by e-mail to dan.mccullough@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

1 TAC §§371.200, 371.201, 371.203, 371.204, 371.206, 371.208, 371.210

Statutory Authority

The amendments and new section are proposed under authority granted to HHSC by §531.033 Government Code, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to implement HHSC's duties, and under §531.021(a), Government Code, which authorizes HHSC to administer federal medical assistance (Medicaid) program funds.

The proposed amendments and new rule affect Chapter 32 of the Human Resources Code.

§371.200. Inpatient Hospital Utilization Review Program.

(a) The Texas Medical Review Program (TMRP) is the inpatient hospital utilization review process [system] used by the Texas Health and Human Services Commission (Commission) [Department of Health (department)] for hospitals reimbursed under the Commission's [department's] prospective payment system. The Commission [department] conducts the TMRP in accordance with:

(1) applicable federal regulations at 42 Code of Federal Regulations Part 456 [§456], Subparts A, B, and [Subpart] C, which require the Commission [department] to operate a utilization review program that controls the utilization of inpatient hospital services and assesses the appropriateness and quality of those services; and [or]

(2) an approved waiver under the Social Security Act, §1903(i)(4) [§1861(k)], as it relates to the use of Title XVIII utilization review procedures for Title XIX patients in acute care general hospitals other than hospitals reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) reimbursement principles. [principles of reimbursement; or]

[(3) diagnostic-related group (DRG) data base that determines the DRG payment schedule, which includes psychiatric and rehabilitation admissions in the DRG payment methodology.]

(b) The TEFRA review process relates directly to hospitals reimbursed under the TEFRA reimbursement principles (children's hospitals) or through the LoneSTAR Select II contracting program (freestanding psychiatric hospitals) [principles of reimbursement].

§371.201. Case Selection Process.

(a) The Texas Health and Human Services Commission (Commission) selects Texas Medical Review Program (TMRP) cases for review by a statistically valid random sampling methodology and/or focused case selection. Cases will consist of paid inpatient claims for diagnostic related groups (DRGs), which may include: [Selection of cases for review includes, but is not limited to:]

(1) Readmissions up to thirty days,

(2) Ambulatory surgical procedures billed on inpatient claims,

(3) Questionable admissions or claims coding identified by other entities,

(4) Admissions identified through the Commission's quality review program as potential quality of care concerns,

(5) DRG payments made to freestanding rehabilitation facilities, and

(6) Day or cost outlier payments.

[(1) Texas Medical Review Program (TMRP) cases:]

[(A) 3.0% random sample per hospital; up to 100% focused review for specific diagnostic related groups (DRGs); readmissions up to 30 days; day surgery billed as inpatient; questionable admissions or coding identified by other entities; transfers to nonprospective payment system (PPS) hospitals; admissions identified through the quality review program as potential quality-of-care concerns;]

[(B) additional cases, up to 100% for any provider or DRG, if:]

[(i) admission denials statewide for a given DRG are 5.0% or greater; or]

[(ii) admission denials for a particular provider are 5.0% or greater; or]

[(iii) admission denials for a given DRG for a particular provider are 5.0% or greater; or]

[(iv) DRG changes statewide for a given DRG are 10% or greater; or]

[(v) DRG changes for a particular provider are 10% or greater; or]

[(vi) DRG changes for a given DRG for a particular provider are 10% or greater;]

[(2) Tax Equity and Fiscal Responsibility Act (TEFRA) cases:]

[(A) up to a 15% sample for each TEFRA hospital. This sample includes, but is not limited to, a 10% random sample of hospitals and 5.0% of admissions comprised of focused review based on identified problem areas (that is, diagnoses or procedures, transfers, day of admission, day of discharge, etc.);]

[(B) 100% of cases in a quarter for any provider, if:]

[(i) inappropriate transfers from TEFRA hospitals to PPS hospitals are identified; or]

[(ii) admission denials are 5.0% or greater for the provider; or]

[(iii) continued stay denials are 10% or greater for that provider.]

(b) The Commission selects Tax Equity and Fiscal Responsibility Act (TEFRA) and LoneSTAR Select II contracting program cases for review by a statistically valid random sampling methodology and/or focused case selection. Cases will consist of paid inpatient claims for admissions to children's hospitals and freestanding psychiatric facilities.

§371.203. Texas Medical Review Program (TMRP) Review Process.

(a) The TMRP review process includes, but is not limited to [For all Medicaid admissions identified for review, the TMRP review process includes, but is not limited to, the following]:

(1) Admission [admission] review to evaluate[, which is a determination of] the medical necessity of the admission. For purposes of the TMRP, Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contract reviews, medical necessity means the patient has a condition requiring treatment that can be safely provided only in the inpatient setting. [;]

(2) Diagnosis-related [diagnosis-related] group (DRG) validation to confirm[, which consists of a determination] that the critical elements necessary to assign a DRG are present in the medical record. Hospital staff are responsible and held accountable for the accuracy of the required critical elements. Those elements are age, sex, discharge status, admission date, discharge date, principal diagnosis, principal and secondary procedures, and any complications or comorbidities (secondary diagnoses). This process also determines [is also a determination] that the principal and secondary diagnoses and procedures are sequenced correctly. The principal diagnosis is the diagnosis (condition) established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care. The secondary diagnoses are conditions that affect the patient care in terms of requiring: clinical evaluation, therapeutic treatment, diagnostic procedures, extended length of hospital stay, [or] increased nursing care and/or monitoring, or in the case of a newborn, conditions [one which] the physician deems to have clinically significant implications for future health care needs. Insignificant conditions or signs or symptoms that resolve without treatment are not to be considered for DRG assignment. [Normal newborn conditions or routine procedures are not to be considered as complications or comorbidities for DRG assignment.] If the principal diagnosis, secondary diagnoses, or procedures are not substantiated in the medical record, are not sequenced correctly, or have been omitted, codes may be deleted, changed, or added [changed, added, or deleted]. When the correct diagnosis and procedure coding and sequencing have been determined [it is determined that the diagnoses and procedures are substantiated and sequenced correctly], the information will be entered into the applicable version of the Grouper software for a DRG assignment [determination]. The Centers For Medicare and Medicaid Services (CMS) [Health Care Financing Administration (HCFA)] approved DRG Grouper software considers the required critical elements [each diagnosis and procedure and the combination of all codes] and determines [makes a determination of] the final DRG assignment. If the DRG validation process results in deletions, changes, or additions to the critical elements, and these changes cause the DRG to be reassigned, the Texas Health and Human Services Commission (Commission) will direct the claims administrator to adjust the payment to the hospital accordingly. [;]

(3) Quality [quality] of care review to assess whether[, which is an assessment of] the quality of care provided [to determine if it] meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury, disease, or death. Quality of care review includes the use of discharge screens and generic quality screens. If quality of care issues are identified, physician consultants under contract with the Commission, and of the specialty related to the care provided, will determine possible clinical recommendations or corrective actions. [;]

(4) Readmission [readmission] review to evaluate[, which consists of reviewing] each admission on its individual merits and determine [as well as determining] if the second or subsequent admissions resulted from [were the direct result of] a premature discharge or were required to provide services that should have been provided in a previous [the first] admission. [;]

(5) Day [day] outlier review to verify[, which consists of verifying] the medical necessity of each day of the admission and includes DRG validation. [;]

(6) Cost [cost] outlier review to verify[, which consists of verifying] that services billed were medically necessary, ordered by a physician, rendered and billed appropriately, and substantiated in the medical record. [; and]

[(7) emergency service review, which consists of verifying that the emergency principal diagnosis (billed and paid), is substantiated in the medical record. If the admission is to a noncontracted hospital in the Medicaid Selective Contracting Program or any other hospital approved for emergency inpatient services only and the process of normal DRG validation, as stated in paragraph (2) of this subsection, results in a change to the principal diagnosis that consequently designates the admission as nonemergency, all monies paid shall be recouped by the Texas Department of Health (department) or its contractor.]

(b) The Commission will [department or its contractor shall] review the complete medical record for the requested admission(s) to make decisions on all aspects of this [the] review process [including but not limited to the medical necessity of the admission, DRG validation, and quality of care]. The complete medical record may [must] include [but is not limited to]: emergency room records, medical/surgical history and physical examination, discharge summary, physicians' progress notes, physicians' orders, lab reports, x-ray reports, operative reports, pathology reports, nurses' notes, medication sheets, vital signs sheets, therapy notes, specialty consultation reports, and special diagnostic and treatment records. If the complete medical record is not available [or is not made available] during the review, the Commission will issue a preliminary technical denial and notify the facility [a preliminary technical denial is issued and the facility is notified].

(c) A [practicing] physician consultant under contract with the Commission will [shall] make all decisions concerning [regarding any aspect of the review process that involves determining] medical necessity, cause of readmission, and [or] appropriateness of setting for [regarding] the service provided. In the event the [practicing] physician consultant determines the services were not medically necessary, should have been provided in a previous [the first] admission, or were not provided in the appropriate setting, the claim will be denied, and the Commission will notify the hospital in writing [hospital shall be notified in writing of that decision, and the appropriate action shall be taken].

§371.204. [TMRP] Hospital Screening Criteria for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act [and] (TEFRA), and LoneSTAR Select II Contract Reviews.

(a) The Texas Health and Human Services Commission (Commission) [Texas Department of Health] uses physician-developed and physician-approved inpatient hospital screening criteria. The criteria include Indications for Hospitalization (IH) and Treatment (T) criteria. Nonphysician reviewers use the criteria as guidelines for the initial approval or for the referral of inpatient reviews for medical necessity decisions. If [either] the IH or T criteria are not met, or if the nonphysician reviewer has any questions concerning the appropriateness of coding or quality of care, the nonphysician reviewer will refer the medical record [medical record will be referred] to a physician consultant under contract with the Commission for a decision. Even if the IH and T criteria are met, the physician consultant [reviewer] may determine that an inpatient admission was not medically necessary and the Commission will issue an admission denial [an admission denial is issued].

(b) For the purposes of the TMRP, [and] TEFRA, and LoneSTAR Select II Contract reviews, medical necessity means that the patient has a condition requiring treatment [and] that [the treatment] can be safely provided only in the inpatient setting.

§371.206. Denials and Recoupments for Texas Medical Review Program (TMRP), [and] Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contracted Hospitals.

(a) Reviews conducted under the Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contracting programs may result in denials of claims. The Texas Health and Human Services Commission (Commission) will notify the hospital in writing of the denial decision, and instruct the claims administrator to recoup payment. Types of denials are: [The following denials are issued as a result of the review process.]

(1) Admission and days of stay [continued stay] denials. A [practicing] physician consultant under contract with the Commission makes all decisions regarding [any aspect of the review process that involves determining] medical necessity, cause of readmission, and [or] appropriateness of setting [regarding the service provided. In the event the practicing physician determines the services were not medically necessary, should have been provided in the first admission, or were not provided in the appropriate setting the hospital shall be notified of that decision].

(2) Technical denials. The Commission will issue a [A] technical denial [shall be issued] when a hospital fails to make the complete medical record available for review [a complete medical record on the date of an onsite review or, for mail-in hospitals,] within specified time frames. These services may not be rebilled on an outpatient basis.

(A) For on-site reviews, if the complete medical record is not made available during the on-site review, the Commission will issue a preliminary technical denial at that time. The hospital is allowed sixty calendar days from the date of the exit conference to provide the complete medical record to the Commission. If the complete medical record is not received by the Commission within this time frame, the Commission will issue a final technical denial. If the Commission requests a copy of the medical record in writing, and the copy is not received within the specified time frame, the Commission will issue a preliminary technical denial by certified mail or fax machine. The hospital has sixty calendar days from the date of the notice to submit the complete medical record. If the complete medical record is not received by the Commission within this time frame, the Commission will issue a final technical denial. [If the complete medical record is not available or is not made available during the onsite review or, for mail-in hospitals, within the specified time frames, a preliminary technical denial shall be issued. Preliminary technical denials shall be issued onsite for onsite reviews. The facility must submit a complete medical record within 60 calendar days from the exit conference date. For mail-in hospitals, preliminary technical denials shall be issued by certified mail or FAX machine, and the facility shall have 60 calendar days from the receipt date of the notice to submit a complete medical record.]

(B) For mail-in reviews, the Commission will request copies of medical records in writing. If the Commission does not receive the complete medical record within the specified time frame, the Commission will issue a preliminary technical denial by certified mail or fax machine. The hospital has sixty calendar days from the date of the notice to submit the complete medical record. If the Commission does not receive the complete medical record within this specified time frame, the Commission will issue a final technical denial. [If the complete medical record is received by the department or its contractor within 60 days after the preliminary technical denial, a final technical denial shall not be issued, and the case will be reviewed. If the complete medical record is not received by the department or its contractor within the 60 calendar days, a final technical denial shall be issued, and payment shall be recouped. Medical records not received by the department or its contractor within the 60 calendar days must be denied review on the merits, and any claim the hospital has to the Medicaid funds at issue must be barred. Extensions of time are not granted for the filing of a medical record beyond the 60 calendar days.]

(3) Readmission denial. If it is determined that the services provided in the second or subsequent admissions were the direct result of a premature discharge or should have been provided in the first or previous admission, the Commission will deny the admission in question [shall be denied, and monies shall be recouped].

(4) Day outlier denial. If it is determined that any [not all of the] days during the admission were not medically necessary, the Commission will deny those days [shall be denied as covered days, and monies shall be recouped].

(5) Cost outlier denial. If it is determined that services delivered were not medically necessary, not ordered by a physician, not rendered or billed appropriately, or not substantiated in the medical record, the Commission will deny those services [monies for those services shall be recouped].

(b) When [Except as otherwise noted in this subsection, when an inpatient admission or continued stay is not medically necessary and] an admission denial or day of [continued] stay denial is issued, the Commission will direct the claims administrator to recoup payment. The Commission will make an exception [department or its contractor shall recoup all monies paid to the hospital for the admission or days of stay that were denied, and no money shall be payable for any of the services provided for the admission or continued stay days denied. An exception shall be made] in the case of TMRP hospitals if [in the event that] the patient was originally placed in observation, and the hospital has been notified by the Commission [department or its contractor] that they may submit a revised outpatient claim solely for medically necessary outpatient services provided during the observation period. A physician's order for observation must be present in the physician's orders to document that the patient was originally placed in outpatient observation [on an outpatient basis]. The hospital must submit the revised outpatient claim and a copy of the Commission's notification letter to the claims administrator at the address indicated in the notification letter. The claims administrator must receive the outpatient claim and copy of the notification letter within one hundred eighty calendar days of the date of the notification letter. The claims administrator may consider payment for the medically necessary services provided during the twenty-four hour observation period. The hospital may provide observation services in any part of the hospital where a patient can be assessed, monitored and treated. [revised claim and a copy of the notification must be submitted to the address indicated in the notification and must be received within 180 days of receipt of the notification. Payment shall be considered for the medically necessary services provided during the first 23 hours. Observation services can be provided in any part of the hospital where a patient placed in observation can be assessed, examined, monitored and/or treated in the course of the customary handling of patients by the facility.]

[(c) When a technical denial becomes final, the department or its contractor recoups all monies paid to the hospital for admission, and no money is payable for any of the services rendered. These services may not be rebilled on an outpatient basis.]

§371.208. Appeals Related To Utilization Review Department Review Decisions.

If a hospital receives notification from the Texas Health and Human Services Commission (HHSC) Utilization Review Department of an adverse decision regarding medical necessity of admission, days of stay, diagnosis related group (DRG) validation, or a final technical denial, the hospital may appeal to the HHSC Resolution Services, Medical/Administrative Appeals Unit. The written notification of adverse

decision will set out the time frame within which the appeal must be received by the HHSC Resolution Services, Medical/Administrative Appeals Unit.

§371.210. Inpatient Utilization Review for Hospitals Reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) Principles of Reimbursement or LoneSTAR Select II Contracting Program.

(a) The TEFRA and LoneSTAR Select II contract review process includes the following: [For all Medicaid admissions identified for review, the TEFRA review process includes, but is not limited to, the following:]

(1) Admission [admission] review to evaluate[, which is a determination of] the medical necessity of the admission. For purposes of the Texas Medical Review Program (TMRP), TEFRA, and LoneSTAR Select II contract reviews, medical necessity means the patient has a condition requiring treatment that can be safely provided only in the inpatient setting. [;]

(2) Continued [continued] stay review to verify [, which is a determination of] the medical necessity of each day of stay. [;]

(3) Quality [quality] of care review to assess [, which is an assessment of] whether the quality of care provided [to determine if it] meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury or death. Quality of care review includes the use of discharge screens and generic quality screens. If quality of care issues are identified, physician consultants under contract with the Texas Health and Human Services Commission (Commission), and of the specialty related to the care provided, will determine possible clinical recommendations or corrective actions. [; and]

[(4) emergency service review, which consists of verifying that the emergency principal diagnosis billed and paid, is substantiated in the medical record. The principal diagnosis is verified as stated in the normal DRG validation process in §41.104(a)(2) of this title (relating to Texas Medical Review Program (TMRP) Review Process). If the admission is to a noncontracted hospital in the Medicaid Selective Contracting Program or any other hospital approved for emergency inpatient services only and the process results in a change to the principal diagnosis that consequently designates the admission as nonemergency, all monies paid shall be recouped by the Texas Department of Health (department) or its contractor.]

(b) The Commission [Staff] will review the complete medical record for the requested admission(s) to make decisions on all aspects of this review process [concerning the medical necessity of the admission, continued stay, and quality of care]. The complete medical record may [must] include[, but is not limited to]: emergency room records, medical/surgical history and physical examination, discharge summary, physicians' [physician's] progress notes, physicians' orders, lab reports, x-ray reports, operative reports, pathology reports, nurses' notes, medication sheets, vital signs sheets, therapy notes, specialty consultation reports, and special diagnostic and treatment records. If the complete medical record is not available during the review, the Commission will issue a preliminary technical denial and notify the facility.

[(c) If the complete medical record is not available or is not made available during the review, a preliminary technical denial will be issued. The facility will be notified and allowed 60 days, after receipt of the notification, to provide the complete medical record. If the complete medical record is received within the 60 days, a final technical denial is not issued and the medical record is reviewed. If the complete medical record is not received within the 60 days, a final technical denial is issued, and payment is recouped. Medical records not received within the 60 days shall be denied review on the merits, and any claim the hospital may have to the Medicaid funds at issue shall be barred. Extensions of time will not be granted for the filing of a medical record beyond the 60 days.]

(c) [(d)] A [practicing] physician consultant under contract with the Commission will [shall] make all decisions concerning [regarding any aspect of the review process that involves determining] medical necessity, cause of readmission, and [or] appropriateness of setting for [regarding] the service provided. In the event the [practicing] physician consultant determines the services were not medically necessary, [;] should have been provided in a previous [the first] admission, [;] or were not provided in the appropriate setting, the claim will be denied, and the Commission will notify the hospital in writing. [hospital is notified in writing of that decision and appropriate action shall be taken.]

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 23, 2002.

TRD-200206174
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6576

1 TAC §§371.202, 371.205, 371.207, 371.209, 371.211

(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 authority granted to HHSC by §531.033 Government Code, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to implement HHSC's duties, and under §531.021(a), Government Code, which authorizes HHSC to administer federal medical assistance (Medicaid) program funds.

The proposed repeals affect Chapter 32 of the Human Resources Code.

§371.202. Contracting for Texas Medical Review Program (TMRP) or Tax Equity and Fiscal Responsibility (TEFRA) Services.

§371.205. Acknowledgment of Penalty Notice.

§371.207. Diagnostic Related Group (DRG) Changes and Adjustments

§371.209. Sanctions under the TMRP and TEFRA.

§371.211. Quality of Care Review.

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 23, 2002.

TRD-200206175
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6576

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2

The Texas Commission on the Arts proposes amendments to §35.1 and 35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts amendments to §35.1 and §35.2 on an emergency basis.

The purpose of the amendments is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended September 2002.

Mary Beck, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Beck also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Operations.

The commission adopts by reference A Guide to Operations (revised September 2002). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§35.2. A Guide to Programs and Services.

The commission adopts by reference A Guide to Programs and Services (revised September 2002). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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 23, 2002.

TRD-200206173
Ricardo Hernandez
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 463-5535

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.5

The State Board of Education (SBOE) proposes an amendment to §33.5, concerning the code of ethics policy for managing and investing the Texas Permanent School Fund (PSF). The section establishes procedures and requirements for a code of ethics policy relating to the Texas PSF. The proposed amendment includes a number of changes to the SBOE's ethics policy. Following is a synopsis of the proposed changes.

In subsection (c)(2)(D)(i), language is proposed to further specify who is deemed to be a PSF Service Provider by virtue of receiving confidential information. In subsection (c)(2)(D)(ii), the definition of PSF Service Provider is expanded to include persons asked by SBOE members to consult with Texas Education Agency (TEA) staff. In subsection (c)(2), a new subparagraph (E) is proposed to include certain TEA PSF and legal staff as PSF Service Providers, thereby requiring each applicable staff member to file reports and abide by other applicable requirements.

New language is proposed for subsection (e). New paragraph (5) establishes that SBOE members are required to disclose the existence of a PSF advisor who meets the definition of a "PSF Service Provider" by virtue of being provided preferential access to information or being asked to meet with managers, etc. on behalf of the SBOE member. New paragraph (6) establishes that SBOE members and PSF Service Providers are required to report any violations of TEC, §7.108, which prohibits persons interested in sale of bonds or textbooks from directly or indirectly participating in an SBOE election. New paragraph (7) specifies that PSF Service Providers are prohibited from making charitable donations that are on the behalf of, requested, by, or coordinated by an SBOE member. New paragraph (8) specifies that PSF Service Providers are required to disclose any business or financial transaction with an SBOE member that is greater than $50. Routine financial transactions, such as bank accounts, are excluded from this provision as reflected in new paragraph (8).

In subsection (f)(1), wording has been added to clarify that a change in classes of assets are not included in rule provisions

dealing with individual securities. The proposed change in subsection (g)(2) clarifies that SBOE members are to disclose conflicts of interest in addition to abstaining from participation and voting. The proposed change in subsection (g)(4) is a technical edit related to the use of an acronym. In subsection (h), clarification is proposed regarding the use of brokers or underwriters. The proposed change in subsection (i) clarifies that SBOE members may not solicit support for any political candidate from any PSF Service Provider. In subsection (k), PSF Service Providers with knowledge of a violation of the Code of Ethics by another PSF Service Provider are required to report the violation.

In subsection (l)(2)(A), the exception for gifts less than $50 is clarified to indicate that the exception does not apply to bribery. In subsection (l)(2)(F), the proposed change clarifies that PSF Service Providers or lobbyists who appear before the SBOE may provide an SBOE member a benefit as per certain limitations. Language from subsection (l)(2)(F)(ii) is removed and then modified and added to subsection (l)(2)(F)(i) to provide clarification regarding what an SBOE member may not accept, including certain items that are valued in excess of $50. In subsection (l)(2)(F)(ii), language is proposed to clarify what an SBOE member may accept. New subsection (l)(2)(M) is proposed to specify that SBOE members and PSF Service Providers are required to file an annual report disclosing any knowledge of violations of the Code of Ethics or affirmatively stating that they have no such knowledge. New subsection (l)(2)(M) requires that this report be filed annually by January 15 and specifies the applicable reporting period. Changes are also proposed to subsections (l)(2)(J) and (l)(2)(K) to change the due dates for other existing reports from April 30 to January 15. A change is also proposed to Figure §33.5(l)(2)(J)(iii) to correspond with the reporting period.

New subsection (o)(5) is proposed to specify that PSF Service Providers who have not filed annual reports may not be paid. The existing TEA staff ethics policy is incorporated by adding proposed new subsection (q). New subsection (r) is proposed to provide clarification about when a reporting period for a new requirement begins.

In accordance with Texas Education Code (TEC), §43.0031(c), the SBOE will submit a copy of the proposed amendment to 19 TAC §33.5 to the Texas Ethics Commission and the state auditor for review and comment. The SBOE will consider any comments from the commission or state auditor prior to final adoption.

David Anderson, general counsel, has determined that for the first five-year period the amendment is in effect there will be no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson 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 is that the policy will help to ensure that the PSF is operated properly. 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. While SBOE members and PSF Service Providers will be required to file additional disclosures, it is estimated that the time required to prepare disclosures generally will be less than one hour per year. However, the time and/or cost of preparing the disclosures will vary depending on the occurrence of the events that trigger reporting.

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, §43.0031, as added by House Bill 3739, 76th Texas Legislature, 1999, which authorizes the State Board of Education to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the Permanent School Fund.

The amendment implements the Texas Education Code, §43.0031, as added by House Bill 3739, 76th Texas Legislature, 1999.

§33.5. Code of Ethics.

(a) Fiduciary responsibility. The members of the State Board of Education (SBOE) serve as fiduciaries of the Texas Permanent School Fund (PSF) and are responsible for prudently investing its assets. The SBOE members or anyone acting on their behalf shall comply with the provisions of this section, the Texas Constitution, Texas statutes, and all other applicable provisions governing the responsibilities of a fiduciary.

(b) Compliance with constitution and code of ethics. The SBOE members are public officials governed by the provisions of the Texas Government Ethics Act, as stated in the Texas Government Code, Chapter 572.

(c) Definitions. For purposes of this section, the following terms shall have the following meanings.

(1) SBOE Member--A member of the SBOE; a spouse of an SBOE member; a child or children of an SBOE member.

(2) Persons Providing PSF Investment and Management Services to the SBOE (PSF Service Providers) are the following individuals:

(A) any person responsible by contract for managing the PSF, investing the PSF, executing brokerage transactions, or acting as a custodian of the PSF;

(B) a member of the Investment Advisory Committee;

(C) any person who provides consultant services for compensation regarding the management and investment of the PSF; [~~or~~]

(D) any person who provides investment and management advice to an SBOE Member, with or without compensation, if an SBOE Member:

(i) gives the person access to records or information that are identified as confidential [~~not currently available to the public or without otherwise complying with the Public Information Act~~]; or

(ii) asks the person to interview, meet with, or otherwise confer with current or potential consultants, advisors, money managers, investment custodians, Texas Education Agency (TEA) staff, or others who currently provide, or are likely to provide, services to the SBOE relating to the management or investment of the PSF ; or [~~.~~]

(E) any member of the TEA PSF staff or legal staff who is responsible for managing the PSF, investing the PSF, executing brokerage transactions, acts as a custodian of the PSF, or provides investment or management advice or legal advice regarding the investment or management of the PSF to an SBOE Member or PSF staff.

(d) Assets affected by this section. The provisions of this section apply to all PSF assets, both publicly and nonpublicly traded investments.

(e) General ethical standards.

(1) SBOE Members and PSF Service Providers must comply with all applicable laws, specifically, the following statutes: Texas Government Code, §825.211 (Certain Interests in Loans, Investments, or Contracts Prohibited), §572.051 (Standards of Conduct for Public Servants), §552.352 (Distribution of Confidential Information), §572.058 (Private Interest in Measure or Decision; Disclosure; Removal from Office for Violation), §572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted), §572.002 (General Definitions), §572.004 (Definition: Regulation), and Chapter 305 (Registration of Lobbyists); and Texas Penal Code, Chapter 36 (Bribery, Corrupt Influence, and Gifts to Public Servants) and Chapter 39 (Abuse of Office, Official Misconduct). The omission of any applicable statute listed in this paragraph does not excuse violation of its provisions.

(2) SBOE Members and PSF Service Providers must be honest in the exercise of their duties and must not take actions that will discredit the PSF.

(3) SBOE Members and PSF Service Providers shall be loyal to the interests of the PSF to the extent that such loyalty is not in conflict with other duties, which legally have priority. SBOE Members and PSF Service Providers shall avoid personal, employment, or business relationships that create conflicts of interest. Should SBOE Members or PSF Service Providers become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the conflict in a manner provided for under this section.

(4) SBOE Members and PSF Service Providers shall not use nonpublic information gained through their relationship with the PSF to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of PSF as a reference or the communication to others of the fact that a relationship with PSF exists, provided that no misrepresentation is involved.

(5) An SBOE Member shall report in writing the name and address of any PSF Service Provider, as defined by subsection (c)(2)(D) of this section, who provides investment and management advice to that SBOE Member. The SBOE Member shall submit the report to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider first providing investment and management advice to that SBOE Member.

(6) SBOE Members and PSF Service Providers shall report in writing any action described by the Texas Education Code, §7.108, to the commissioner of education for distribution to the SBOE within seven days of discovering the violation.

(7) A PSF Service Provider shall not make any gift or donation to a school or other charitable interest on behalf of, at the request of, or in coordination with an SBOE Member. Any PSF Service Provider or SBOE Member shall disclose in writing to the commissioner of education any information regarding such a donation.

(8) A PSF Service Provider shall disclose in writing to the commissioner of education for dissemination to all SBOE Members any business or financial transaction greater than $50 in value with an SBOE Member within 30 days of the transaction. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to the SBOE Member under the same terms and conditions as they are provided to members of the general public.

(f) Disclosure.

(1) If an SBOE Member has a personal, private, direct, or indirect financial interest in a matter before the SBOE or if an SBOE Member solicited a specific investment action by the PSF staff or a PSF Service Provider, the SBOE Member shall publicly disclose the fact to the SBOE in a public meeting and shall not participate in a discussion or vote on a matter in which the SBOE Member has such interest. The disclosure shall be entered into the minutes of the meeting. For purposes of this section, a matter is a prospective directive to the PSF staff or a PSF Service Provider to undertake a specific investment or divestiture of securities for the PSF. This term does not include ratification of prior securities transactions performed by the PSF staff or a PSF Service Provider and does not include an action to allocate classes of assets within the PSF.

(2) In addition, an SBOE Member shall fully disclose any substantial interest in any publicly or nonpublicly traded PSF investment (business entity) on the SBOE Member's annual financial report filed with the Texas Ethics Commission pursuant to Texas Government Code, §572.021. An SBOE Member has a substantial interest if the SBOE Member:

(A) has a controlling interest in the business entity;

(B) owns more than 10% of the voting interest in the business entity;

(C) owns more than $25,000 of the fair market value of the business entity;

(D) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the business entity;

(E) is a member of the board of directors or other governing board of the business entity;

(F) serves as an elected officer of the business entity; or

(G) is an employee of the business entity.

(g) Conflicts of interest.

(1) A conflict of interest exists whenever SBOE Members or PSF Service Providers have personal or private commercial or business relationships that could reasonably be expected to diminish their independence of judgment in the performance of their duties. For example, a person's independence of judgment is diminished when the person is in a position to take action or not take action with respect to PSF and such act or failure to act is, may be, or reasonably appears to be influenced by considerations of personal gain or benefit rather than motivated by the interests of PSF. Conflicts include, but are not limited to, beneficial interests in securities, corporate directorships, trustee positions, or other special relationships that could reasonably be considered a conflict of interest with the duties to the PSF.

(2) An SBOE Member shall fully disclose in any meeting that considers an issue about which the member has a conflict of interest and shall not participate in a discussion or vote on a matter in which the SBOE Member has direct or indirect financial interest.

(3) Any SBOE Member or PSF Service Provider who has a conflict of interest shall disclose the conflict to the commissioner of education and the chair and vice chair of the SBOE on the disclosure form. The disclosure form is provided in this subsection entitled "Potential Conflict of Interest Disclosure Form."
Figure: 19 TAC §33.5(g)(3) (No change.)

(4) A person who files a statement under paragraph (3) of this subsection disclosing a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the SBOE, after consultation with the general counsel of the TEA, [~~Texas Education Agency (TEA),~~] expressly waives this prohibition. The SBOE may delegate the authority to waive this prohibition.

(h) Prohibited transactions and interests. For purposes of this section, the term "direct placement" (with respect to investments that are not publicly traded) is defined as a direct sale of securities, generally to institutional investors, with or without the use of brokers or underwriters.

(1) No SBOE Member or PSF Service Provider shall:

(A) have a financial interest in a direct placement investment of the PSF;

(B) serve as an officer, director, or employee of an entity in which a direct placement investment is made by the PSF; or

(C) serve as a consultant to, or receive any fee, commission or payment from, an entity in which a direct placement investment is made by the PSF.

(2) No SBOE Member or PSF Service Provider shall:

(A) act as a representative or agent of a third party in dealing with a PSF manager or consultant; or

(B) be employed for two years after the end of his or her term on the SBOE with an organization in which the PSF invested, unless the organization's stock or other evidence of ownership is traded on the public stock or bond exchanges.

(i) Solicitation of support. No SBOE Member shall solicit support on behalf of any political candidate from a PSF Service Provider or any PSF manager, consultant, or staff member. The manager, PSF Service Provider, consultant, or staff member shall report any such incident in writing to the commissioner of education for distribution to the SBOE.

(j) Hiring external professionals. The SBOE may contract with private professional investment managers to help make PSF investments. The SBOE has the authority and responsibility to hire other external professionals, including custodians or consultants. The SBOE shall select each professional based solely on merit and subject to the provisions of §33.55 of this title (relating to Standards for Selecting Consultants, Investment Managers, Custodians, and Other Professionals To Provide Outside Expertise for the Fund).

(k) Responsibilities of PSF Service Providers. The PSF Service Providers shall be notified in writing of the code of ethics contained in this section. Any existing contracts for investment and any future investment shall strictly conform to this code of ethics. The PSF Service Provider shall report in writing any suggestion or offer by an SBOE Member to deviate from the provisions of this section to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. The PSF Service Provider shall report in writing any violation of this code of ethics committed by another PSF Service Provider to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. A PSF Service Provider or other person retained in a fiduciary capacity must comply with the provisions of this section.

(l) Gifts and entertainment.

(1) Bribery. SBOE Members are prohibited from soliciting, offering, or accepting gifts, payments, and other items of value in exchange for an official act, including a vote, recommendation, or any other exercise of official discretion (Texas Penal Code, §36.02).

(2) Acceptance of gifts.

(A) An SBOE Member may not accept gifts, favors, services, or benefits that may reasonably tend to influence the SBOE Member's official conduct or that the SBOE Member knows or should know are intended to influence the SBOE Member's official conduct. For purposes of this paragraph [~~section~~], a gift does not include an item with a value of less than $50, excluding cash or negotiable instruments.

(B) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows is interested or is likely to become interested in a charter, contract, purchase, payment, claim, or other pecuniary transaction over which the SBOE has discretion.

(C) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows to be subject to the regulation, inspection, or investigation of the SBOE or the TEA.

(D) An SBOE Member may not solicit, accept, or agree to accept a benefit from a person with whom civil or criminal litigation is pending or contemplated by the SBOE or the TEA.

(E) So long as the gift or benefit is not given by a person subject to the SBOE's or the TEA's regulation, inspection, or investigation, an SBOE Member may accept a gift, payment, or contribution from an individual who is not registered as a lobbyist with the Texas Ethics Commission if it fits into one of the following categories:

(i) items worth less than $50 (may not be cash, checks, or negotiable instruments);

(ii) independent relationship, such as kinship, or a personal, professional, or business relationship independent of the SBOE Member's official capacity;

(iii) fees for services rendered outside the SBOE Member's official capacity;

(iv) government property issued by a governmental entity that allows the use of the property; or

(v) food, lodging, entertainment, and transportation, if accepted as a guest and the donor is present.

(F) The following provisions govern the disposition of an individual who is a PSF Service Provider or who is both [~~registered as~~] a lobbyist registered with the Texas Ethics Commission and who represents a person subject to the SBOE's or the TEA's regulation, inspection, or investigation.

(i) An SBOE Member may not accept:

(I) loans, cash, or negotiable instruments; [~~or~~]

(II) travel or lodging for a pleasure trip ; [~~.~~]

(III) travel and lodging in connection with a fact-finding trip or to a seminar or conference at which the SBOE Member does not provide services;

(IV) entertainment worth more than $50 in a calendar year;

(V) gifts, other than awards and mementos, that combined are worth more than $50 in value for a calendar year. Gifts do not include food, entertainment, lodging, and transportation; or

(VI) individual awards and mementos worth more than $50 each.

(ii) An SBOE Member may accept food and beverages if the PSF Service Provider or lobbyist is present. [:]

[(I) food and beverages, if the lobbyist is present;]

[(II) entertainment worth up to $500 in a calendar year, if the lobbyist is present;]

[(III) gifts, other than awards and mementos, that combined do not exceed $500 in value for a calendar year. This does not include food, entertainment, lodging, and transportation;]

[(IV) individual awards and mementos worth not more than $500 each; or]

[(V) travel and lodging in connection with a fact-finding trip or to a seminar or conference at which the SBOE Member is providing services. The lobbyist must be present.]

(G) An SBOE Member may not solicit, agree to accept, or accept an honorarium in consideration for services that the SBOE Member would not have been asked to provide but for the SBOE Member's official position. An SBOE Member may accept food, transportation, and lodging in connection with a speech performed as a result of the SBOE Member's position. An SBOE Member must report the food, lodging, or transportation accepted under this subparagraph in the SBOE Member's annual personal financial statement.

(H) Under no circumstances shall an SBOE Member accept a prohibited gift if the source of the gift is not identified or if the SBOE Member knows or has reason to know that the gift is being offered through an intermediary.

(I) If an unsolicited prohibited gift is received by an SBOE Member, he or she should return the gift to its source. If that is not possible or feasible, the gift should be donated to charity. The SBOE Member shall report the return of the gift or the donation of the gift to the commissioner of education.

(J) A PSF Service Provider shall file a report annually on January 15 [April 30] of each year on the expenditure report provided in this subsection entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund." The report shall be for the time period beginning on December 1 of the previous year and ending on November 30 of the current year. The expenditure report must describe in detail any expenditure of more than $50 made by the person on behalf of:

(i) an SBOE Member;

(ii) the commissioner of education; or

(iii) an employee of the TEA or of a nonprofit corporation created under the Texas Education Code, §43.006.
Figure: 19 TAC §33.5(l)(2)(J)(iii)

(K) A PSF Service Provider shall file a report annually with the TEA's PSF office, in the format specified by the PSF staff, on or before January 15 [April 30] of each year. The report will be deemed to be filed when it is actually received. The report shall be for the time period beginning on December 1 [April 1] of the previous year and ending on November 30 [March 31] of the current year. It shall list any individuals who served in any of the following capacities at any time during the reporting period:

(i) all members of the governing body of the PSF Service Provider;

(ii) the officers of the PSF Service Provider;

(iii) any broker who conducts transactions with PSF funds;

(iv) all members of the governing body of the firm of a broker who conducts transactions with PSF funds; and

(v) all officers of the firm of a broker who conducts transactions with PSF funds.

(L) This subsection does not apply to campaign contributions.

(M) Each SBOE Member and each PSF Service Provider shall, no later than January 15, file an annual report affirmatively disclosing any violation of this code of ethics known to that person during the previous year which has not previously been disclosed in writing to the commissioner of education for distribution to all board members, or affirmatively state that the person has no knowledge of any such violation. For purposes of this subparagraph only, "SBOE Member" means only the individual elected official.

(m) Compliance with professional standards.

(1) SBOE Members and PSF Service Providers who are members of professional organizations which promulgate standards of conduct must comply with those standards.

(2) PSF Service Providers must comply with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research.

(n) Transactions between PSF Service Providers and/or consultants.

(1) PSF Service Providers or persons who act as consultants to the SBOE regarding investment and management of the PSF shall not engage in any transaction involving the assets of the PSF with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(2) PSF Service Providers and/or consultants to the SBOE who provide advice regarding investment and management of the PSF shall report to the SBOE on a quarterly basis all investment transactions or trades and any fees or compensation paid in connection with the transactions or trades with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(o) Compliance and enforcement.

(1) The SBOE will enforce this rule through its chair and vice chair and the commissioner of education.

(2) Any violation will be reported to the chair and vice chair of the SBOE and the commissioner of education and a recommended action will be presented to the SBOE. A violation of this section may result in the termination of the contract or a lesser sanction. Repeated minor violations may also result in the termination of the contract.

(3) The executive director of the PSF shall act as custodian of all statements, waivers, and reports required under this section for purposes of public disclosure requirements.

(4) The ethics officer of the TEA may respond to inquiries concerning the provisions of this section. The ethics officer may confer with the general counsel and the executive director of the PSF.

(5) No payment shall be made to a PSF Service Provider who has failed to timely file a completed report as described by subsection (k) of this section, until a completed report is filed.

(p) Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission and the TEA's ethics officer.

(q) TEA general ethical standards. The commissioner of education and PSF staff shall comply with the General Ethical Standards for the Staff of the Permanent School Fund and the Commissioner of Education.

(r) A new report required by an amendment to the code of ethics need only concern events after the effective date of the amendment. An amendment to a rule that presently requires a report does not effect the reporting period unless the amendment explicitly changes the reporting period.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206166
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER A. THE BOARD

22 TAC §51.3

The Texas State Board of Barber Examiners proposes amendments to §51.3, concerning Administrative Fines. The proposed amendments are pursuant to the recodification (Acts 1999, 76th Legislature, Chapter 388, effective September 1, 1999) of the former Texas Barber Law, Texas Civil Statutes, Article 8401 - Article 8407a into the Texas Civil Statutes, and the subsequent amendments to Chapter 1601 (Acts 2001, 77th Legislature Chapters 246 and 1420, effective September 1, 2001), and to update references to the Texas Occupations Code as the authority to issue administrative fines for practice and procedure violations.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, the economic implications relating to the costs of the state government will be contingent upon the administrative costs accrued by the Barber Board to issue violations and comply with administrative procedure to collect the fines; the revenue of state government will be contingent upon the number and the amount of fines collected. Enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that schools, licensees, and permit holders comply with the requirements of the Texas Occupations Code, Chapter 1601 and the rules of the Board. There are anticipated economic costs to persons who violate the rule as proposed.

Comments on the proposed amendments may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731 (1-888-870-8755; fax (512) 458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date of the proposed action is published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, §1601.151 which vests the Board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Occupations Code, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Occupations Code, Chapter 1601 and to ensure strict compliance with the Texas Occupations Code, Chapter 1601.

No other article or statute is affected by these amendments.

§51.3. Administrative Fines.

(a) Civil penalties will be assessed according to schedule of administrative fines set up by the board. It is the desire of the board to be both consistent and equitable and to consider and evaluate each case on an individual basis. The actual civil penalty which the board assesses shall be based on the board's consideration of the factors in the Texas Occupations Code Chapter 1601, Barbers [~~LAW GOVERNING THE PRACTICE OF BARBERING~~], but the fine for any one violation or rule adopted under the Texas Occupations Code Chapter 1601, Barbers [~~LAW GOVERNING THE PRACTICE OF BARBERING~~] shall not exceed $1,000.

(b) Fine Schedule:
Figure: 22 TAC §51.3(b)

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 17, 2002.

TRD-200206043
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 458-1091

SUBCHAPTER C. EXAMINATION AND LICENSING

22 TAC §51.59

The Texas State Board of Barber Examiners proposes new §51.59, concerning Student Violation Prior to the Examination. The proposed new section provides that a student who has been issued a citation for a violation of the Texas Occupations Code, Chapter 1601 or rules of the Barber Board may not take the examination for licensure until final resolution of the citation.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the section is in effect, the economic implications relating to the costs of the state government will be contingent upon the administrative costs accrued by the Barber Board to issue a violation and comply with administrative procedure; the revenue of state government will be contingent upon the number and the amount of fines collected. Enforcing or administering the section has no foreseeable economic implications relating to costs or revenues of local government.

Dr. Beran also has determined that, for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be to ensure that barber school students comply with the requirements of the Texas Occupations Code, Chapter 1601 and rules of the Board. There are anticipated economic costs to persons who violate the rule as proposed.

Comments on the proposed new rule may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731 (1-888-870-8755; fax (512) 458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date of the proposed action is published in the *Texas Register*.

The new section is proposed under the Texas Occupations Code, §1601.151 which vests the Board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Occupations Code, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Occupations Code, Chapter 1601 and to ensure strict compliance with the Texas Occupations Code, Chapter 1601.

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

§51.59. Student Violation Prior to the Examination.

A student who has been issued a citation for a violation of the Texas Occupations Code, Chapter 1601 or rules of the Barber Board may not take the examination for licensure until final resolution of the citation.

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 17, 2002.

TRD-200206044
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 458-1091

SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners proposes amendments to §51.141, concerning Definitions. The amendments provide that (1) the use of any blade, drill, or cutting tool for the purpose of removing any or all corns or calluses is considered a medical practice and is prohibited and that (2) the possession or storage of any blade or cutting tool for the purpose as contemplated by the rule is prima facie evidence of use.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, the economic implications relating to the costs of the state government will be contingent upon the administrative costs accrued by the Barber Board to issue a violation against anyone who violates the rule and comply with administrative procedure; the revenue of state government will be contingent upon the number and the amount of fines collected. Enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to prohibit the use of unsafe tools. There are anticipated economic costs to persons who violate the amendments as proposed.

Comments on the proposed amendments may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731 (1-888-870-8755; fax (512) 458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date of the proposed action is published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by these amendments.

§51.141. Definitions.

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

(1) Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a line drawn from the bottom of the ear.

(2) The hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(3) The Sideburn--A sideburn may be part of a hair cut or style that is a continuation of the natural scalp hair growth, and must not extend below the bottom of the ear lobe, and must not be connected to any other bearded area on the face. Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.

(4) The Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture and shall only be trimmed, shaped or cut by a licensed barber.

(5) Out of Scope--

(A) The use of any blade or cutting tool for the purpose of removing any or all corns or calluses is considered a medical practice

and is prohibited. The possession or storage of any blade or cutting tool for the purpose as contemplated by this rule is prima facie evidence of use.

(B) The use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the Texas State Board of Barber Examiners.

(C) Any chemical currently not approved for a particular use by the EPA, FDA, or any other governmental agency is prohibited.

(D) Or any other practice prohibited by Barber Law or Board Rules.

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

Filed with the Office of the Secretary of State on September 17, 2002.

TRD-200206045
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 458-1091

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.5, §71.7

The Texas Board of Chiropractic Examiners proposes to amend chapter 71, relating to applications and applicants for a chiropractic license. The proposal amends §71.5(b) to delete the category of "candidate status" from the definition of "a bona fide reputable chiropractic school" and amends §71.7(a) to allow otherwise eligible applicants to take the jurisprudence examination in their last semester of chiropractic college. The Texas Chiropractic Act, Occupations Code §201.302 and §201.303, requires an applicant for a chiropractic license to have attended a bona fide reputable chiropractic school. Section 201.302 sets out some requirements for eligible chiropractic schools. Section 71.5(b) explains that a bona fide reputable chiropractic school is one that holds candidate status or has been accredited by the Council on Chiropractic Education (CCE). The CCE no longer utilizes "candidate status" in its accreditation process. Accordingly, the proposed amendment to §71.5(b) deletes this reference for consistency with the CCE's procedures. Section 201.304(c) gives the board discretion to allow applicants to take the jurisprudence examination in their last semester of chiropractic college upon submission of satisfactory grades by the applicant. Section 71.7(a) currently does not allow for examination until an applicant has completed the last semester of chiropractic college and graduated. The proposed amendment to §71.7(a) will allow an applicant to take the jurisprudence examination during their last semester upon proof of satisfactory grades. For the purposes of this section, satisfactory grades will be defined as a passing grade in all required courses for graduation. The amendment also states that the board will not issue a license until an applicant has submitted proof of completion of the last semester and graduation. Other revisions have been made to both sections to update references to the Chiropractic Act and for consistency in grammar and format.

Sandy Grome, Director of Licensure has determined that for the first five-year period the sections as amended are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as amended.

Ms. Grome has also determined that for each year of the first five years, the sections as amended are in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendments, will be (1) having rules that are consistent with accreditation procedures by the CCE, and (2) having applicants eligible for licensure immediately upon graduation, thus, providing the public greater access to chiropractic services and allowing applicants to pursue their careers as soon as possible after graduation. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002, or anticipated economic cost to persons who are required to comply with the amendments as proposed.

Written comments on the proposed amendments may be submitted no later than 30 days from the date of this publication, to Sandy Grome, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

These amendments are proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Section 71.5 and §71.7--Occupations Code, §201.152.

§71.5. Approved Chiropractic Schools and Colleges.

(a) The board may annually review and approve those chiropractic schools whose graduates are eligible for examination and licensure under subchapter G of the [~~the provisions of~~] Chiropractic Act[~~, §10~~].

(b) A bona fide reputable, chiropractic school as that term is used in subchapter G of the Chiropractic Act[~~, §10,~~] is a school which [~~either holds candidate status or~~] is accredited by the Council on Chiropractic Education.

§71.7. Jurisprudence Examination.

(a) An applicant may not take the Jurisprudence Examination unless he or she has complied with all the requirements in the Chiropractic Act, Occupations Code §§201.302 - 201.304 [~~§10~~], including having fulfilled the educational requirements of Occupations Code §201.303. The board may approve an applicant, otherwise eligible for licensure, to take the examination in his or her last semester of chiropractic college upon submission of evidence of satisfactory grades. For the purpose of this subsection, "satisfactory grades" means a passing grade in all courses that are required for graduation. The board will not issue a license to an applicant until the applicant has submitted to the board evidence of completion of the last semester and graduation from chiropractic college [~~§10~~].

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206158
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 305-6709

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners proposes to amend §73.7(a), relating to approved continuing education courses. The proposal adds international professional associations to the board's list of approved entities that may provide continuing education courses for the board's continuing education requirements. The Texas Chiropractic Act, Occupations Code §201.356(a), requires the board to evaluate and approve continuing education courses for licensed chiropractors. As part of this responsibility, the board maintains a list of colleges, societies and associations whose courses will be accepted for compliance with the board's continuing education requirements. Currently, international associations are not approved by the board for the purpose of continuing education. International professional associations are recognized by private accreditation entities as providing quality continuing education courses. Courses from international associations may be appropriate for the continuing education needs of licensees, and these associations should be included on the board's list of approved sponsors.

Sandy Grome, Director of Licensure, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Ms. Grome has also determined that for each year of the first five years, the section as amended is in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendment, will be to provide greater opportunities for continuing education courses on a variety of subjects, which, in turn, will inure to the public benefit by increasing the opportunities for training and education of the state's chiropractors. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002, or anticipated economic cost to persons who are required to comply with the amendment as proposed.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandy Grome, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and §201.356, which the board interprets as authorizing it to adopt rules to develop a process to evaluate and approve continuing education courses.

The following are the statutes, articles, or codes affected by the proposed rule:

Section 73.7--Occupations Code, §201.152 and §201.356

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, [or] national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) - (k) (No change.)

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206159
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 305-6709

CHAPTER 79. PROVISIONAL LICENSURE

22 TAC §79.1

The Texas Board of Chiropractic Examiners proposes to amend §79.1(a)(2), relating to provisional licensure. The proposal adds Part IV of the National Board of Chiropractic Examiners (NBCE) Examination to the examination requirement for a provisional license. The Chiropractic Act, Occupations Code, §201.309(a)(2), requires that an applicant for provisional licensure either have passed a national examination or another examination recognized by the board. Under §79.1(a)(2), the board currently requires an applicant take Parts I, II, III, and Physiotherapy of the NBCE Examination (a national test) or the NBCE SPEC Examination. An applicant for licensure for an original license or by examination, on the other hand, must take Parts I through IV and Physiotherapy of the NBCE Examination. The examination requirements for provisional licensing, at a minimum, are intended to mirror the examination requirements for licensure by examination. As an option, the board has recognized the SPEC test and will allow an out-of-state chiropractor, otherwise qualified, to take the SPEC in satisfaction of the examination requirement for a provisional license. The purpose of this proposal is to bring §79.1(a)(2) into line with the requirements for an original license by examination by adding Part IV.

Sandy Grome, Director of Licensure, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Ms. Grome has also determined that for each year of the first five years, the section as amended is in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendment, will be greater assurance that out-of-state

chiropractors who qualify under the provisional licensure rules are qualified to practice. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002, or the only anticipated economic cost to persons who are required to comply with the amendment, as proposed, will be the cost of taking Part IV.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandy Grome, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.309(a)(2), which the board interprets as authorizing it to adopt rules relating to examinations recognized by the board for provisional licensure.

The following are the statutes, articles, or codes affected by the amendments:

Section §79.1(a)(2)--Occupations Code, §201.152 and §201.309(a)(2)

§79.1. General Requirements for Provisional Licensure.

(a) An individual may apply for a provisional license under the following circumstances:

(1) (No change.)

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts [~~Part~~] I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

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

(b) - (h) (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 20, 2002.

TRD-200206160
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 305-6709

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.2

The Texas Board of Physical Therapy Examiners proposes amendments to §322.2, concerning Role Delineation. The amendment will fix an incorrect subsection reference.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline 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 better access to licensure information. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§322.2. Role Delineation.

(a) (No change.)

(b) The role of the physical therapy aide

(1) All rules governing the services provided by a PTA are further modified for the physical therapy aide.

(2) A physical therapy aide may be assigned responsibilities by the supervising PT or PTA to provide services as specified in the physical therapy plan of care (See §322.1(c)[~~(e)~~] of this chapter, relating to Physical Therapy Plan of Care development and implementation) within the scope of on-the-job training with onsite supervision by a PT or PTA within reasonable proximity.

(3) A physical therapy aide may not:

(A) perform any evaluative or assessment activities;

(B) initiate physical therapy treatment, to include exercise instruction; or

(C) write or sign physical therapy documents in the permanent record, except as provided for in §322.1(d), Documentation of treatment.

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 23, 2002.

TRD-200206171
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 305-6900

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.6

The Texas Board of Physical Therapy Examiners proposes amendments to §329.6, concerning Licensure by Endorsement. The amendment will state that the Board may issue a provisional license to a person once licensed in Texas, who must take the national examination to restore his/her licensure in Texas. The amendments also establish the duration of the provisional license.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline 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 the increased availability of physical therapy services. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.6. Licensure by Endorsement.

(a) Eligibility. The board may issue a license by endorsement to an applicant currently licensed in another state, District of Columbia, or territory of the United States, if they have not previously held a permanent license issued by this board.

(b) Requirements. An applicant seeking licensure by endorsement must:

(1) meet the requirements as stated in §329.1 of this title (relating to General licensure requirements and procedures); and

(2) submit a passing score on the National Physical Therapy Examination sent directly to the board by the board-approved reporting service, or scores on the Registry Examination sent directly to the board by the American Physical Therapy Association. The applicant's score must meet one of the conditions listed in subparagraphs (A) - (C) of this paragraph:

(A) The applicant must have passed the national examination given on or after January 1, 1993, with the score required by the board for that exam.

(B) The applicant must have obtained a score of 1.5 standard deviations below the nationwide mean on an examination given prior to January 1, 1993.

(C) The applicant must have obtained a score of 75% or higher for the Registry Examination taken prior to September 1971; and

(3) submit verification of licensure in good standing from the licensing board in the jurisdiction in which the applicant is currently licensed. This verification must be sent directly to the board by the licensing board in that jurisdiction.

(c) Provisional licensure. The board may grant a provisional license under the conditions listed below. The applicant must submit the provisional license fee as set by the executive council, and meet all other requirements of licensure by examination or endorsement as set by the board. The board may not grant a provisional license to an applicant with disciplinary action in their licensure history. The provisional license is valid for 180 days, or until a permanent license is issued or denied, whichever is first. The conditions under which the board may grant a provisional license are:

(1) The applicant is applying for licensure by endorsement, and there is a delay in the submission of required documents outside the applicant's control; or

(2) The applicant has previously held a Texas license and is currently licensed in another state that has licensing requirements substantially equivalent to those of Texas, but has not worked as a PT or PTA for the two years prior to application for a license in Texas, and must submit to reexamination to restore the Texas license (see §341.1, Requirements for Renewal).

[~~(c) Provisional licensure. The board may grant a provisional license to an applicant who is applying for licensure by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met., and notarized proof of sponsorship by a licensee of this board, before the license may be issued. The board may not grant a provisional license to an applicant with disciplinary action in their licensure history, or to an applicant with pending disciplinary action.~~]

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 23, 2002.

TRD-200206167
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 305-6900

♦ ♦ ♦

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENT OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) proposes an amendment to §535.2 concerning Broker's Responsibility.

The amendment adds new subsection (d) to §535.2 to define the minimum level of service that a consumer may expect to receive from a broker who represents the consumer. This clarification is

proposed based on concerns raised by various real estate industry organizations regarding limited service listing agreements. A limited service listing agreement is an agreement by which a broker provides fewer services than those services provided for in a traditional real estate listing agreement. A limited service agreement may provide for a menu of services or reduced fees for certain specified services rather than a full commission for the complete range of brokerage services generally found in a traditional real estate agency relationship.

In many cases under such listing, a real estate broker may provide no service to the seller except to place the listing in a Multiple Listing Service. Typically, the listing broker instructs the cooperating broker to contact the seller directly for all purposes (showings, presentations of offers, and negotiations).

This practice raises several concerns for brokers who represent buyers interested in properties listed under limited service agreements. Often times the seller does not understand the complexities of the transaction and relies upon the cooperating broker for assistance and advice. The seller is reluctant to approach the limited service broker for assistance at the risk of incurring significant additional fees; in some cases the limited service broker will not provide the additional service. When the cooperating broker represents the buyer, the cooperating broker is uncomfortable about providing assistance or advice to the seller. Cooperating brokers also understand, however, that failing to provide the requested services to the seller may jeopardize the transaction or increase risks associated with the transaction.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the basic services that a Texas real estate licensee is required to provide under the law. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

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

§535.2. Broker's Responsibility.

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

(d) A broker who represents a party in a real estate transaction must, at a minimum, provide the following services to the broker's client:

(1) accept and present to the client offers and counter-offers to buy, sell, or lease the client's property or property the client seeks to buy or lease;

(2) assist the client in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and

(3) answer the client's questions relating to the offers, counter-offers, and notices.

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 18, 2002.

TRD-200206104
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 465-3900

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 409. MEDICAID PROGRAMS

SUBCHAPTER L. MENTAL RETARDATION LOCAL AUTHORITY (MRLA) PROGRAM

25 TAC §409.501

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §409.501, concerning description of the mental retardation local authority (MRLA) program.

The amendments will implement the organization of waiver contract areas throughout the state for the Mental Retardation Local Authority (MRLA) Program, a Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act. Each waiver contract area may include the local service area of one or more local mental retardation authorities (MRAs). Each MRA's local service area encompasses one or more counties.

Currently, an MRLA Program provider must enter into a contract for each MRA local service area in which it provides MRLA Program services. The result is numerous contracts for some MRLA Program providers. The amendments will enable a provider to enter into one contract for each waiver contract area. The program provider may choose to provide MRLA Program services to one or more of the MRA local service areas included in a waiver contract area, but must serve all the counties in each local service area chosen. The result is fewer contracts for MRLA Program providers.

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. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply with the

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

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected is that MRLA Program providers will have to enter into fewer contracts.

Comments concerning the proposed new sections must be submitted in writing to Linda Logan, director, Policy Development, by mail to Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA Program.

The proposed amendments affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§409.501. Description of the Mental Retardation Local Authority (MRLA) Program.

(a) The Mental Retardation Local Authority (MRLA) Program [~~program~~] is a Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) [~~pilot program that is limited to certain geographic areas of the state in accordance with a waiver approved by Health Care Financing Administration (HCFA)~~] pursuant to §1915(c) of the Social Security Act to operate in certain counties as determined by the Texas Department of Mental Health and Mental Retardation (TDMHMR). TDMHMR is authorized to operate the MRLA Program by the Texas Health and Human Services Commission (THHSC). [~~The counties included in the MRLA program are: Lubbock, Cochran, Crosby, Hockley, Lynn, Travis, and Tarrant. TDMHMR may extend the MRLA Program geographic area to include additional counties when approved by Health Care Financing Administration (HCFA).~~]

(b) TDMHMR has grouped the counties of the State of Texas into 42 geographical areas, referred to as "local service areas," each of which is served by a local mental retardation authority (MRA). TDMHMR has further grouped the local service areas into nine geographical areas, referred to as "waiver contract areas." A list of the counties included in each local service area and waiver contract area may be obtained by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

(1) A program provider may provide MRLA Program services only to persons residing in the counties specified in its program provider agreement.

(2) A program provider must have a separate program provider agreement for each waiver contract area served by the program provider.

(3) A program provider may have a program provider agreement to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the program provider agreement.

(4) A program provider may not have more than one program provider agreement per waiver contract area.

(c) [~~(b)~~] The Home and Community-based Services (HCS) Program [~~program~~] and Home and Community-based Services - OBRA (HCS-O) Program [~~program~~] are not available in the areas serviced by the MRLA Program [~~geographic locations noted in subsection (a) of this section~~].

(d) [~~(c)~~] Only program providers that are certified by TDMHMR [~~Texas Department of Mental Health and Mental Retardation (TDMHMR)~~] to provide MRLA Program [~~program~~] services may receive Medicaid payments for these services. Certification of MRAs [~~local mental retardation authorities (MRAs)~~] that are operating as MRLA Program [~~program~~] providers will be based upon the results of reviews conducted by TDMHMR. All other program providers will be certified based upon the recommendation of the MRA having jurisdiction in the service area(s) in which the program provider operates.

(e) [~~(d)~~] An individual who, on the effective date of the MRLA Program [~~program~~], is enrolled in the HCS Program or HCS-O Program [~~program~~] and is a resident of one of the counties in an area serviced by the MRLA Program [~~listed in subsection (a) of this section~~] will be automatically enrolled. Enrollment of any other individuals in the MRLA Program [~~program~~] must be approved by TDMHMR.

(f) [~~(e)~~] After the effective date of the MRLA pilot program, an individual who is enrolled in the HCS Program or HCS-O Program [~~program~~] while a resident of a county other than a county in an area serviced by the MRLA Program [~~one listed in subsection (a) of this section~~] and who becomes a resident of a county in an area serviced by the MRLA Program [~~listed in subsection (a) of this section~~] may enroll in the MRLA Program [~~program~~] with the approval of TDMHMR.

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 23, 2002.

TRD-200206191
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 206-5232

♦ ♦ ♦

CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER N. TEXAS HOME LIVING (TxHmL) PROGRAM

25 TAC §§419.551 - 419.563, 419.565 - 419.580, 419.582 - 419.585

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§419.551-419.563, 419.565-419.580, and 419.582-419.585 of new Chapter 419, Subchapter N, governing the Texas home living (TxHmL) program.

The proposed new subchapter will implement a provision of Executive Order RP 13 issued by Governor Rick Perry on April 18, 2002, that directs the Texas Health and Human Services Commission to work with the department to develop a new "selected essential services waiver" using existing general revenue funds that will serve individuals with mental retardation on the department's waiting list for Medicaid waiver program services. The new waiver program, the Texas Home Living (TxHmL) Program, will be submitted to the Centers for Medicare and Medicaid Services (CMS) for approval under §1915(c) of the Social Security Act.

Under the program, a portion of the general revenue funds currently used by the 42 local mental retardation authorities (MRAs) to provide community-based services will be redirected and used as state matching funds to provide services and supports under the new waiver for some individuals currently receiving general revenue funded services. Funds gained as a result of changing the method of finance for current services can then be made available to fund waiver services for additional individuals whose names are on the department's waiver program waiting list.

The program's goal is to support individuals to continue living with their families or in their own homes and, therefore, will not provide a resource for out-of-home residential services. The proposed TxHmL service components, described in §419.555 of the proposed rules, are considered essential to achieving this goal. TxHmL will serve individuals eligible for Medicaid benefits prior to their enrollment in the program who are living in their own or family homes. Individuals served by the waiver will not require out-of-home residential services or intensive one-to-one supervision. The proposed annual cost ceiling for waiver program services is $10,000 per individual. Service coordination will be provided to each enrolled individual by employees of the local mental retardation authority. Mental retardation authorities will be reimbursed for the provision of service coordination under the state's Targeted Case Management Program.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed new subchapter is in effect, enforcing or administering the subchapter does not have foreseeable implications relating to cost or revenues of state or local government. It is not anticipated that the proposed new subchapter will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply with the new subchapter. It is not anticipated that the amendments will affect a local economy.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the new subchapter is in effect, the public benefit expected will be the use of Medicaid funds to serve individuals whose names are on the waiver waiting list and individuals whose services currently are funded with general revenue.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, October 25, 2002, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Medicaid Administration, at least 72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning the proposed new subchapter must be submitted in writing to Linda Logan, director, Policy Development, by mail to Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The new subchapter is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the TxHmL Program.

The proposed new subchapter affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.551. Purpose.

The purpose of this subchapter is to describe:

(1) the eligibility criteria and process for enrollment in the Texas Home Living (TxHmL) Program;

(2) the requirements for TxHmL Program provider certification and process for certifying and sanctioning program providers in the TxHmL Program;

(3) the requirements for reimbursement of program providers; and

(4) the requirements for mental retardation authorities (MRAs) and the process for correcting practices found to be out of compliance with the TxHmL Program principles for mental retardation authorities.

§419.552. Application.

This subchapter applies to MRAs, program providers, and persons applying for or receiving TxHmL Program services and their legally authorized representatives (LARs).

§419.553. Definitions.

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

(1) Applicant -- A Texas resident seeking services in the TxHmL Program.

(2) Centers for Medicare and Medicaid (CMS) -- The federal agency that administers Medicaid programs.

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

(4) Family home -- The home of an applicant's or individual's natural, adoptive, or Texas Department of Protective and Regulatory Services foster family.

(5) HCS Program -- The Home and Community-Based Services Program operated by the department as authorized by the Centers for Medicare and Medicaid (CMS) in accordance with §1915(c) of the Social Security Act.

(6) ICF/MR Program -- The Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions Program.

(7) IPC (individual plan of care) -- A document that describes the type and amount of each TxHmL Program service component to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(8) IPC cost -- Estimated annual cost of program services included on an IPC.

(9) IPC year -- A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(10) Individual -- A person enrolled in the TxHmL Program.

(11) LAR (legally authorized representative) -- A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(12) LOC (level of care) -- A determination made by the department about an applicant or individual as part of the TxHmL Program eligibility determination process based on data submitted on the MR/RC Assessment.

(13) LON (level of need) -- An assignment given by the department for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the MR/RC Assessment.

(14) MRA (mental retardation authority) -- An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation, and for supervising and ensuring the provision of mental retardation services to people with mental retardation in one or more local service areas.

(15) MRLA Program -- The Mental Retardation Local Authority Program operated by the department as authorized by the Centers for Medicare and Medicaid Services (CMS) in accordance with §1915(c) of the Social Security Act.

(16) MR/RC Assessment -- A form used by the department for LOC determination and LON assignment.

(17) Own home -- A residence owned or leased by an applicant or individual in which he or she lives.

(18) Performance contract -- A written agreement between the department and a local authority for the provision of one or more functions as described in the Texas Health and Safety Code (THSC), §533.035(b).

(19) PDP (person-directed plan) -- A plan developed for an applicant in accordance with §419.567 of this title (relating to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR.

(20) Program provider -- An entity that provides TxHmL Program services under a program provider agreement with the department in accordance with Chapter 419, Subchapter Q of this title (relating to Enrollment of Medicaid Waiver Program Providers).

(21) Program provider agreement -- A written agreement between the department and a program provider that obligates the program provider to deliver TxHmL Program services.

(22) Respite facility -- A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(23) Service coordinator -- An employee of an MRA responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(24) Service planning team -- A planning team constituted by an MRA consisting of an applicant or individual, the LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(25) THSC (Texas Health and Safety Code) -- Texas statutes relating to health and safety.

(26) TAC (Texas Administrative Code) -- A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

§419.554. Description of the Texas Home Living (TxHmL) Program.

(a) The TxHmL Program is a Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. T The TxHmL Program is operated by the department under the authority of the Texas Health and Human Services Commission.

(b) Enrollment in the TxHmL Program is limited to the number of individuals in specified target groups approved by CMS.

(c) The department has grouped the counties of the State of Texas into 42 geographical areas, referred to as "local service areas," each of which is served by a local mental retardation authority (MRA). The department has further grouped the local service areas into nine geographical areas, referred to as "waiver contract areas." A list of the counties included in each local service area and waiver contract area may be obtained by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

(1) A program provider may provide TxHmL Program services only to persons residing in the counties specified in its program provider agreement.

(2) A program provider must have a separate program provider agreement for each waiver contract area served by the program provider.

(3) A program provider may have a program provider agreement to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the program provider agreement.

(4) A program provider may not have more than one program provider agreement per waiver contract area.

(d) A program provider's program provider agreement must:

(1) specify which of the following service components will be provided by a person who is employed, not contracted with, the program provider:

(A) community support;

(B) day habilitation;

(C) supported employment; or

(D) respite; and

(2) be amended prior to changing the service component specified in accordance with paragraph (1) of this subsection.

(e) The MRA must provide service coordination to all individuals enrolled in the TxHmL Program in accordance with this subchapter. Service coordination is reimbursed in accordance with 1 TAC §355.743 (relating to Reimbursement Methodology for Service Coordination)

(f) TxHmL Program service components, as defined in §419.555 of this title (relating to TxHmL Program Service Components), are selected by the service planning team for inclusion in an applicant's or individual's Individual Plan of Care (IPC) to:

(1) assure the applicant's or individual's health and welfare in the community;

(2) supplement rather than replace the applicant's or individual's natural supports and other non-TxHmL Program sources for which the applicant or individual may be eligible; and

(3) prevent the applicant's or individual's admission to institutional services.

§419.555. Definitions of TxHmL Program Service Components.

(a) The community support service component provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's person-directed plan (PDP).

(1) The community support service component provides habilitative or support activities that:

(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining his or her home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;

(ii) access and use services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people, who are not paid service providers, that expand or sustain the individual's natural support network.

(2) The community support service component provides assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law.

(3) The community support service component does not include payment for room or board.

(4) The community support service component may not be provided at the same time that the respite, day habilitation, or supported employment service component is provided.

(5) The community support service component is reimbursed on an hourly basis.

(b) The day habilitation service component assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life and does not include services that are funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act.

(1) The day habilitation service component provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver service components, school, or other support providers;

(C) services in a group setting other than the individual's home up to five days a week, six hours per day;

(D) personal assistance for individuals that cannot manage their personal care needs during the day habilitation activity;

(E) assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law; and

(F) transportation necessary for the individual's participation in day habilitation activities.

(2) The day habilitation component may not be provided at the same time supported employment is provided to an individual who has obtained employment.

(3) The day habilitation component is reimbursed on a daily or one-half day unit basis.

(c) The nursing service component provides treatment and monitoring of health care procedures as prescribed by a physician or medical practitioner or as required by standards of professional practice or state law to be performed by licensed nurses.

(1) The nursing service component includes:

(A) administration of medication;

(B) monitoring an individual's use of medications;

(C) monitoring an individual's health data and information;

(D) assisting an individual or LAR to secure emergency medical services for the individual;

(E) making referrals for appropriate medical services;

(F) performing health care procedures as ordered or prescribed by a physician or medical practitioner or as required by standards of professional practice or law to be performed by licensed nursing personnel; and

(G) delegating and monitoring tasks assigned to other service providers by a registered nurse in accordance with state law.

(2) The nursing service component is reimbursed on an hourly unit basis.

(d) The employment assistance service component assists individuals to locate paid employment in the community.

(1) The employment assistance component assists an individual to identify:

(A) his or her employment preferences;

(B) his or her job skills;

(C) his or her requirements for the work setting and work conditions; and

(D) prospective employers that may offer employment opportunities compatible with the individual's identified preferences, skills, and requirements.

(2) The employment assistance provider facilitates the individual's employment by contacting prospective employers and negotiating the individual's employment.

(3) Employment assistance is reimbursed on an hourly unit basis.

(4) The employment assistance service component must be re-authorized by the individual's service planning team every 180 calendar days after the initiation of the service component.

(e) The supported employment service component provides on-going individualized supports needed by an individual to sustain paid work in an integrated work setting.

(1) An individual receiving supported employment is:

(A) compensated directly by the individual's employer in accordance with the Fair Labor Standards Act; and

(B) employed in an integrated work setting by an employer that has no more than one employee or 3.0% of its employees with disabilities unless the individual's PDP indicates otherwise or the employer subsequently hires an additional employee with disabilities who is receiving services from a provider other than the individual's program provider or who is not receiving services.

(2) Supported employment may only be provided when the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system.

(3) Supported employment is provided away from the individual's place of residence.

(4) Supported employment does not include payment for the supervisory activities rendered as a normal part of the business setting.

(5) Supported employment does not include services provided to an individual who does not require such services to continue employment.

(6) An individual's program provider may not be the employer of an individual receiving supported employment.

(7) Supported employment is reimbursed on an hourly unit basis.

(f) The behavioral support service component provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. The component is reimbursed on an hourly unit basis and includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with family members or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) The adaptive aids service component provides devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the waiver application approved by CMS that enable an individual to increase his or her mobility, ability to perform activities of daily living, or ability to perceive, control, or communicate with the environment in which he or she lives.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A) lifts;

(B) mobility aids;

(C) positioning devices;

(D) control switches/pneumatic switches and devices;

(E) environmental control units;

(F) medically necessary supplies;

(G) communication aids;

(H) adapted/modified equipment for activities of daily living; and

(I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of $6,000 per individual per IPC year.

(3) The adaptive aids service component does not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) The minor home modifications service component provides physical adaptations to the individual's home that are necessary to insure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in his or her home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications as specified in the waiver application approved by CMS may be provided up to a lifetime limit of $7,500 per individual. After the $7,500 limit has been reached, an individual is eligible for an additional $300 per IPC year for additional modifications or maintenance of home modifications.

(2) The minor home modifications service component does not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations.

(i) The dental treatment service component may be provided up to a maximum of $1,000 per individual per IPC year for the following treatments:

(1) emergency dental treatment;

(2) preventive dental treatment;

(3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) The respite service component is provided for the planned or emergency short-term relief of the unpaid caregiver of an individual.

(1) The respite service component provides individuals:

(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) assistance with medications and performance of tasks delegated by a Registered Nurse in accordance with state law;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite is provided on an hourly or daily unit basis.

(4) Respite may be provided in the individual's residence or, if certification principles stated in §419.578(o) of this title (relating to Certification Principles: Service Delivery) are met, in other locations.

(k) The specialized therapies service component provides assessment and treatment by licensed occupational therapists, physical therapists, speech and language pathologists, audiologists, and dietitians and includes training and consultation with an individual's family members or other support providers. Specialized therapies are reimbursed on an hourly unit basis.

§419.556. Eligibility Criteria.

(a) An applicant or individual is eligible for the TxHmL Program if:

(1) he or she meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) he or she meets the eligibility criteria for the ICF/MR I level of care (LOC) as defined in §419.238 of this title (relating to Level of Care I Criteria) as determined by the department according to §419.560 of this title (relating to Level of Care (LOC) Determination);

(3) he or she has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code (THSC), Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A) or has been diagnosed by a licensed physician as having a related condition as defined in §419.203 of this title (relating to Definitions) prior to enrollment in the TxHmL Program;

(4) he or she has been assigned an LON 1, 5, 8, or 6 in accordance with §419.562 of this title (relating to Level of Need (LON) Assignment);

(5) he or she has an approved IPC for which the IPC cost does not exceed $10,000 per IPC year;

(6) he or she is not enrolled in another Medicaid 1915(c)waiver program;

(7) he or she has chosen, or his or her LAR has chosen, participation in the TxHmL Program over participation in the ICF/MR Program;

(8) his or her service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which he or she may be eligible are sufficient to assure his or her health and welfare in the community; and

(9) he or she lives in his or her own home or family's home.

(b) An applicant or individual is financially eligible for the TxHmL Program if he or she:

(1) is categorically eligible for Supplemental Security Income (SSI) benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under age 19 and financially the responsibility of the Texas Department of Protective and Regulatory Services (TDPRS), in whole or in part (not to exceed Level II foster care payment), and being cared for in a family foster home licensed or certified and supervised by:

(A) TDPRS; or

(B) a licensed public or private nonprofit child placing agency; or

(4) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Aid to Needy Families (TANF).

§419.557. Calculation of Co-payment.

(a) The method for determining an individual's or couple's co-payment is described in subsections (b) of this section and documented on the Texas Department of Human Services (TDHS) Medical Assistance Only Worksheet.

(b) The co-payment amount is determined by TDHS and is the individual's or couple's remaining income after all allowable expenses have been deducted.

(1) The co-payment amount is applied only to the cost of home and community-based services funded through the TxHmL Program and specified on each individual's IPC.

(2) The co-payment must not exceed the cost of services actually delivered.

(3) The co-payment must be paid by the individual or couple, authorized representative, or trustee directly to the program provider in accordance with the TDHS determination.

(4) When calculating the co-payment amount for an individual or couple with incomes that exceed the maximum Personal Needs Allowance the following are deducted:

(A) the Personal Needs Allowance which must be equivalent to 300% of the current Supplemental Security Income benefit;

(B) the cost of the maintenance needs of the individual's or couple's dependent children. This amount is equivalent to the TANF basic monthly grant for children or a spouse with children, using the recognizable needs amounts in the TANF Budgetary Allowances Chart; and

(C) the costs incurred for medical or remedial care that are necessary but are not subject to payment by Medicare, Medicaid, or any other third party, including the cost of health insurance premiums, deductibles, and co-insurance.

§419.558. Individual Plan of Care (IPC).

(a) An initial IPC must be developed for each applicant in accordance with §419.567 of this title (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §419.568 of this title (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) The IPC must specify the type and amount of each service component to be provided to the individual, as well as services and supports to be provided by other non-TxHmL Program sources during the IPC year. The type and amount of each service component must be supported by:

(1) documentation that non-TxHmL Program sources for the service component are unavailable and the service component supplements rather than replaces natural supports or non-TxHmL Program services;

(2) assessments of the individual that identify specific service components necessary for the individual to continue living in the community, to assure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program service components are necessary for the individual to live in the community; are necessary to prevent his or her admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program sources (if applicable), to assure the individual's health and welfare in the community.

(c) Prior to submission to the department, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b)(1)-(3) of this section.

(d) An individual's IPC must be approved by the department and is subject to review in accordance with §419.559 of this title (relating to Department Review of Individual Plan of Care (IPC)).

(e) If the IPC is submitted for approval electronically, the submitted IPC must contain information identical to that on the signed copy of the IPC.

§419.559. Department Review of Individual Plan of Care (IPC).

(a) The department may review supporting documentation specified in §419.558(b) of this title (relating to Individual Plan of Care (IPC)) at any time to determine if the type and amount of TxHmL Program services specified in an IPC are appropriate. The service coordinator must submit documentation supporting the IPC to the department in accordance with the department's request.

(b) The department may modify an IPC based on its review.

§419.560. Level of Care (LOC) Determination.

(a) The MRA must request an LOC determination for an applicant or individual by electronically submitting a completed MR/RC Assessment to the department, indicating the recommended LOC. The electronically transmitted MR/RC Assessment must contain information identical to that on the signed MR/RC Assessment.

(b) An LOC determination must be made by the department in accordance with §419.237(c) of this title (relating to Level of Care).

(c) Information on the MR/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

(d) The MRA must maintain the signed MR/RC Assessment and documentation supporting the recommended LOC in the applicant's or individual's record.

(e) The department must approve and enter the appropriate LOC into the automated billing and enrollment system or send written notification to the service coordinator that an LOC has been denied.

(f) An LOC determination is valid for 364 calendar days after the LOC effective date determined by the department.

§419.561. Lapsed Level of Care (LOC).

(a) To reinstate authorization for payment for days when services were delivered to an individual without a current LOC determination, the MRA must electronically submit to the department an MR/RC Assessment for each period of time for which there was a lapsed LOC according to department procedures.

(b) The MRA must maintain in the individual's record:

(1) a copy of the individual's most recent MR/RC Assessment approved by department; and

(2) an MR/RC Assessment identical to that submitted in accordance with subsection (a) of this section for each period of time for which there was a lapsed LOC.

(c) The department will not grant a request for reinstatement of an LOC determination:

(1) to establish program eligibility;

(2) to renew an LOC determination;

(3) to obtain an LOC determination for a period of time for which an LOC has been denied;

(4) to revise an LON; or

(5) for a period of time for which an individual's IPC is or was not current.

§419.562. Level of Need (LON) Assignment.

(a) The MRA must request the department to assign an LON for an applicant or individual by electronically transmitting a completed MR/RC Assessment to the department, indicating the recommended LON and, as appropriate, submitting supporting documentation in accordance with §419.563(b) and (c) of this title (relating to Department Review of Level of Need (LON)).

(b) The MRA must maintain the applicant's or individual's ICAP Assessment Booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON which may include but is not limited to:

(1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;

(2) assessments and interventions by qualified professionals; and

(3) behavioral intervention plans.

(c) If an LON 9 is recommended, the MRA must maintain documentation that proves:

(1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;

(2) a written behavior intervention plan has been implemented that meets department guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;

(3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the person supervising the individual has no other duties or activities during the period of supervision; and

(5) the individual's MR/RC Assessment if correctly scored with a "2" in the Behavior section.

(d) The department must assign an LON for an individual based on the individual's ICAP service level score, information reported on the individual's MR/RC Assessment, and required supporting documentation. Documentation supporting a recommended LON must be submitted to the department in accordance with department guidelines.

(e) The department must assign one of five LONs in accordance with §409.507(d) of this title (relating to Level of Need Assignment).

§419.563. Department Review of Level of Need (LON).

(a) The department may review a recommended or assigned LON at any time to determine if it is appropriate. If the department reviews an LON, documentation supporting the LON must be submitted by the MRA to the department in accordance with the department's request. Based on its review, the department may modify an LON.

(b) If an LON 9 is requested, the department may review documentation supporting the requested LON.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted by the MRA to the department in accordance with this subchapter and received by the department within seven calendar days after the MRA has electronically transmitted the recommended LON.

(d) Within 21 calendar days after receiving the supporting documentation, the department must:

(1) request additional documentation;

(2) electronically approve the recommended LON and establish the effective date; or

(3) send written notification that the recommended LON has been denied.

(e) The department must review any additional documentation submitted in accordance with the department's request and electronically approve the recommended LON or send written notification to the MRA that the recommended LON has been denied.

§419.565. Notification of Applicants Receiving General Revenue Funded Services.

(a) At the direction of the department, an MRA must notify a person who is receiving general revenue funded services from the MRA and is identified by the department as potentially eligible for the TxHmL Program, or the person's LAR, that the person must seek enrollment in the TxHmL Program to continue receiving current services.

(b) The MRA must provide the person or LAR, and, unless the LAR is a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the person may be eligible including the ICF/MR Program (both state mental retardation facilities and community-based facilities), other waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports.

(c) If the person or LAR chooses or declines participation in the TxHmL Program, the MRA must notify the person or LAR that the person's name will remain on the HCS Program or MRLA Program waiting list, as applicable, without change to the chronological date of registration or may be placed on the applicable waiting list.

(d) If the person or LAR chooses participation in the TxHmL Program, the person or LAR must document his or her choice of TxHmL Program services over ICF/MR Program services or other services using the department's Verification of Freedom of Choice form.

(e) The MRA must retain the person's completed Verification of Freedom of Choice form in the applicant's record.

(f) Copies of the Verification of Freedom of Choice form are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

§419.566. Notification of Applicants Registered on Waiver Program Waiting Lists.

(a) Upon written notification by the department of a TxHmL Program vacancy in the MRA's local service area, the MRA notifies the applicant whose name is first on the waiting list for, as applicable, the HCS Program as maintained by the MRA in accordance with §419.165 of this title (relating to Maintenance of HCS Program Waiting List) or the MRLA Program as maintained by the MRA in accordance with §409.523 of this title (relating to Maintenance of MRLA Program Waiting List) of the vacancy.

(b) If an applicant or LAR is offered a program vacancy in accordance with this section, the MRA must provide the applicant, the applicant's LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible including the ICF/MR Program (both state mental retardation facilities

and community-based facilities), other waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports.

(c) If an applicant or LAR chooses or declines participation in the TxHmL Program, the MRA must notify the applicant or LAR that the applicant's name will remain on the HCS Program or MRLA Program waiting list, as applicable, without change to the chronological date of registration.

(d) An applicant or LAR must document his or her choice of TxHmL Program services over ICF/MR Program services or other services using the department's Verification of Freedom of Choice form.

(e) The MRA must retain in the applicant's record:

(1) the Verification of Freedom of Choice form documenting the applicant's or the LAR's choice of services; and

(2) any correspondence related to the offer of a program vacancy.

(f) Copies of the Verification of Freedom of Choice form are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P. O. Box 12668, Austin, Texas 78711-2668.

§419.567. Process for Enrollment.

(a) If an applicant or the LAR chooses participation in the TxHmL Program, the MRA must assign a service coordinator who develops, in conjunction with the service planning team, a person-directed plan (PDP). At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in his or her own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program service components and justification for each service component to be included in the IPC;

(4) documentation that the type and amount of each service component included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the service components for which the applicant may be eligible; and

(5) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

(b) The MRA must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The MRA must complete an MR/RC Assessment.

(A) The MRA must:

(i) determine or validate a determination that the applicant has mental retardation in accordance with Chapter 415, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports -- Mental Retardation Priority Population and Related Conditions); or

(ii) verify that the individual has been diagnosed by a licensed physician as having a related condition as defined in §419.203 of this title (relating to Definitions).

(B) The MRA must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to the Department in accordance with §419.562 of this title (relating to Level of Need (LON) Assignment).

(2) The MRA must develop a proposed IPC with the applicant or the LAR based on the PDP and §419.555 of this title (relating to Definitions of TxHmL Program Service Components).

(c) For applicants notified of a program vacancy in accordance with §419.566 of this title (relating to Notification of Applicants Registered on Waiver Program Waiting Lists), the MRA will inform the applicant or the LAR of all available TxHmL program providers in the local service area. The MRA will:

(1) provide information to the applicant or the LAR regarding all TxHmL Program providers in the MRA's local service area;

(2) review the proposed IPC with potential TxHmL Program providers selected by the applicant or the LAR;

(3) arrange for meetings/visits with potential TxHmL Program providers as desired by the applicant or the LAR;

(4) assure that the applicant's or LAR's choice of a TxHmL Program provider is documented, signed by the individual or the LAR, and retained by the MRA in the applicant's record; and

(5) negotiate/finalize the proposed IPC with the selected TxHmL Program provider.

(d) When the selected TxHmL Program provider has agreed to deliver those services delineated on the IPC, the MRA will transmit the enrollment information to the department. The department will notify the applicant or the LAR, the selected TxHmL Program provider, and the MRA of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §419.556 (relating to Eligibility Criteria).

(e) Upon receipt of the department's approval of the enrollment of a person described in §419.565 (relating to Notification of Applicants Receiving General Revenue Funded Services), the MRA must inform the person or LAR of the person's option to transfer at any time to another TxHmL Program provider and, if requested, provide information to the person or the LAR regarding all TxHmL Program providers in the MRA's local service area. If the person or LAR chooses to transfer to another TxHmL Program provider, the service coordinator must assist the person or LAR in accordance with §419.569 of this title (relating to Coordination of Transfers).

(f) If a selected TxHmL Program provider initiates services prior to the department's notification of enrollment approval, the program provider may not be reimbursed in accordance with §419.573(k)(11) of this title (relating to Provider Reimbursement).

§419.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the service planning team and the TxHmL Program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, will initiate revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must submit annual reviews and necessary revisions of the IPC to the department for approval and retain documentation as described in §419.567 of this title (relating to Process for Enrollment) and §419.558 of this title (relating to Individual Plan of Care (IPC)).

(b) The service coordinator must submit annual evaluations of LOC or revisions of LOC to the department for approval in accordance with §419.560 of this title (relating to Level of Care (LOC) Determination).

(c) The MRA must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must submit an MR/RC Assessment to the department recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, prior to that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to the department in accordance with §419.563 (relating to Department Review of Level of Need (LON)).

(3) The MRA must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

§419.569. Coordination of Transfers.

(a) An individual moving to the local service area of a different MRA or the LAR may request to transfer to a TxHmL Program provider in the new service area. The service coordinator from the receiving MRA must:

(1) coordinate with the individual or LAR and the current MRA to facilitate selection of a TxHmL Program provider in the receiving area;

(2) provide information to assist the individual or LAR regarding TxHmL Program providers in the area;

(3) determine an effective date for the transfer in conjunction with the individual or LAR, the current TxHmL Program provider, and the receiving TxHmL Program provider; and

(4) review the current IPC with the individual or LAR and the receiving TxHmL Program provider and negotiate and finalize the IPC.

(b) If an individual or LAR chooses to transfer to a TxHmL Program provider within the current MRA's local service area, the service coordinator must:

(1) coordinate with the individual or LAR, the current TxHmL Program provider, and the receiving TxHmL Program provider to facilitate the transfer;

(2) review the current IPC with the individual or LAR and the receiving TxHmL Program provider and initiate any changes, if needed; and

(3) determine an effective date for transfer in conjunction with the individual or LAR, current TxHmL Program provider and the receiving TxHmL Program provider.

(c) An individual's IPC year will not be changed upon transfer to another TxHmL Program provider.

§419.570. Permanent Discharge from the TxHmL Program.

(a) Within ten working days of a proposed permanent discharge of an individual, the service coordinator must submit a written request containing the following information to the department and provide a copy of the request to the individual or LAR:

(1) justification for the permanent discharge; and

(2) a discharge plan documenting, as appropriate:

(A) that the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of permanent discharge for receiving future TxHmL Program services; and

(B) the service linkages that are in place following the individual's discharge from the TxHmL Program.

(b) The department may approve an individual's discharge from the TxHmL Program if:

(1) the individual no longer meets the eligibility criteria specified in §419.556 of this title (relating to Eligibility Criteria);

(2) the individual or LAR requests permanent discharge;

(3) the individual or LAR refuses to cooperate in the delivery or planning of services as documented by the TxHmL Program provider and the service coordinator; or

(4) the individual's service planning team determines that the individual no longer requires TxHmL Program services to maintain his or her residence in the community.

(c) If the department approves the request for permanent discharge, the department must send a written discharge notification to the individual or LAR, the TxHmL Program provider, and the MRA indicating the effective date of the discharge and the individual's right to a fair hearing in accordance with §419.571 of this title (relating to Fair Hearings).

§419.571. Fair Hearings.

An applicant or individual whose request for eligibility for the TxHmL Program is denied or is not acted upon with reasonable promptness, or whose TxHmL Program services have been terminated, suspended, or reduced by the department, or the applicant's or individual's LAR is entitled to a fair hearing in accordance with Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings).

§419.572. Other Program Provider Requirements.

Program providers must comply with requirements of the Omnibus Budget Reconciliation Act of 1990, 42 United States Code §1396a(w)(1), regarding advanced directives under state plans for medical assistance.

§419.573. Provider Reimbursement.

(a) The department will pay the program provider for service components as follows:

(1) community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and specialized therapies are paid for in accordance with the reimbursement rate for the specific service component; and

(2) adaptive aids, minor home modifications, and dental services are paid for based on the actual cost of the item or service and an allowed requisition fee.

(b) The program provider must accept the department's payment for a service component as payment in full for the service component.

(c) If the program provider disagrees with the enrollment date of an individual as determined by the department, the program provider must notify the department in writing of its disagreement, including

the reasons for the disagreement, within 180 days after the end of the month in which the provider receives the enrollment approval letter. The department will review the information submitted by the program provider and notify the program provider of its determination regarding the individual's enrollment date.

(d) The program provider must prepare and submit claims for service components in accordance with this subchapter, the TxHmL Provider Agreement, and the *TxHmL Service Definitions and Billing Guidelines*.

(e) The program provider must submit an initial claim for a service component as follows:

(1) community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and specialized therapies must be electronically transmitted to the department via the automated enrollment and billing system; and

(2) adaptive aids, minor home modifications, and dental services must be submitted in writing to the department for entry into the automated enrollment and billing system.

(f) The program provider must submit a claim for a service component to the department by the latest of the following dates:

(1) within 95 calendar days after the end of the month in which the service component was provided;

(2) within 45 calendar days after the date of the enrollment approval letter issued by the department; or

(3) within 95 calendar days after the end of the month in which the program provider obtains from the MRA a dated response from a non-TxHmL Program source for which the individual may be eligible, refusing or denying a correctly submitted request for payment for or provision of the service component.

(g) If an individual is temporarily or permanently discharged from the TxHmL Program, the program provider may submit a claim for a service component provided on the day of the individual's discharge.

(h) If the department rejects a claim for adaptive aids, minor home modifications, or dental services, the program provider may submit a corrected claim to the department. The corrected claim must be received by the department within 180 days after the end of the month in which the service component was provided or within 45 days after the date of the notification of the rejected claim, whichever is later.

(i) If the program provider submits a claim for an adaptive aid or dental services, the program provider must submit documentation obtained from the MRA demonstrating that sources of payment other than the TxHmL Program for which the individual may be eligible, including Medicare, Medicaid (such as Texas Health Steps and Home Health), a state rehabilitation agency, the public school system, and private insurance, denied a request for payment. Such documentation must include evidence that a proper, complete, and timely request for payment or provision of the service component was made to the other payment source and that payment or provision of the service was denied.

(j) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the program provider must submit an individualized assessment conducted by a professional qualified to assess whether the aid or modification is necessary and appropriate to address the individual's needs and other documentation in accordance with department instructions.

(k) The department will not pay the program provider for a service component or will recoup any payments made to the program provider for a service component if:

(1) the individual receiving the service component was, at the time the service component was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF-MR;

(2) the service component was not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(3) the service component provided did not meet the service definition as described in §419.555 of this title (relating to Definitions of TxHmL Program Service Components) or was not provided in accordance with the *TxHmL Service Definitions and Billing Guidelines*;

(4) the service component was not documented in accordance with the *TxHmL Service Definitions and Billing Guidelines*;

(5) the claim for the service component was not prepared and submitted in accordance with the *TxHmL Service Definitions and Billing Guidelines*;

(6) documentation as required by subsection (j) of this section was not submitted by the program provider;

(7) the department determines that the service component would have been paid for by a source other than the TxHmL Program;

(8) the service component was provided by a service provider who did not meet the qualifications to provide the service component as described in the *TxHmL Service Definitions and Billing Guidelines*;

(9) the service component was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §419.558 of this title (relating to Individual Plan of Care (IPC);

(10) the service component was not provided in accordance with the PDP;

(11) the service component was provided prior to the individual's enrollment date into the TxHmL Program; or

(12) the service component was not provided.

(l) The program provider must refund to the department any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from the department, whichever is earlier.

(m) Payments by the department to a program provider will not be withheld in the event the MRA erroneously fails to submit a renewal of an enrolled individual's LOC or IPC and the program provider continues to provide services in accordance with the most recent IPC as approved by the department.

§419.574. Record Retention.

(a) A program provider must retain original records described in this subchapter necessary to disclose the extent of the service components provided by the program provider or required by the program provider agreement and, on request, provide the department, at no cost to the department, any such records and any information regarding claims filed by the program provider until the latest of the following occurs:

(1) six years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

(b) An MRA must retain original records described in this subchapter necessary to disclose the extent of the services provided to the individual and, on request, provide the department, at no cost to the department, any such records until the latest of the following occurs:

(1) six years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

§419.575. Provider's Right to Administrative Hearing.

A program provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions), if the department takes or proposes to take the following action:

(1) vendor hold;

(2) contract termination;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's request for payment.

§419.576. Program Provider Certification and Review.

(a) The program provider must be in continuous compliance with the certification principles contained in this subchapter.

(b) The department conducts an on-site certification review of the program provider to evaluate evidence of the program provider's compliance with certification principles. Based on its review, the department takes action as described in §419.577 of this title (relating to Corrective Action and Program Provider Sanctions).

(c) Following the initial on-site certification review by the department, conducted in accordance with Chapter 419, Subchapter Q of this title (relating to Enrollment of Medicaid Waiver Program Providers), the department conducts an on-site certification review at least annually.

(d) The department certifies a program provider for a period of 365 calendar days after the date of an initial or annual certification review.

(e) The department may conduct announced or unannounced reviews of the program provider at any time.

(f) During any review, including a follow-up review or a review in which corrective action from a previous review is being evaluated, the department may review the TxHmL Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) The department conducts an exit conference at the end of all on-site reviews, at a time and location determined by the department, to inform the program provider of the department's findings, determination, any proposed actions, and any actions required of the program provider.

§419.577. Corrective Action and Program Provider Sanctions.

(a) If the department determines that the program provider is in compliance with all certification principles at the end of the review exit conference, the department certifies the program provider and no action by the program provider is required.

(b) If the department determines that the program provider is out of compliance with 10% or fewer of the certification principles at the end of the review exit conference, but the program provider is in compliance with all principles found out of compliance in the previous review, the program provider must submit a corrective action plan to the department within 14 calendar days after the program provider receives the department's certification report.

(1) The corrective action plan must specify a date by which corrective action will be completed, and such date must be no later than 90 calendar days after the certification review exit conference.

(2) If the program provider submits a corrective action plan in accordance with this subsection and the plan is approved by the department, the department certifies the program provider. The department evaluates the program provider's required corrective action during the department's first review of the program provider after the corrective action completion date.

(3) If the program provider does not submit a corrective action plan in accordance with this subsection or the plan is not approved by the department, the department initiates termination of the program provider's program provider agreement, implements vendor hold against the program provider and, in conjunction with the local MRA, coordinates the provision of alternate services for the individuals receiving TxHmL Program services from the program provider.

(c) If the department determines that the program provider is out of compliance with ten percent or fewer of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department:

(1) certifies the program provider, if the program provider:

(A) presents evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submits a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance; or

(2) does not certify the program provider and initiates termination of the program provider's program provider agreement, if the provider does not:

(A) present evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submit a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance.

(d) If the department determines that the program provider is out of compliance with between 10 and 20% of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department does not certify the program provider and applies Level I sanctions against the program provider.

(1) Under Level I sanctions, the program provider must complete corrective action within 30 calendar days after the review exit conference; and the department conducts an on-site follow-up review within 30 to 45 calendar days after the review exit conference.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of and implements vendor hold against the program provider if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(3) If the department implements vendor hold against the provider, the department conducts a second on-site follow-up review between 30 and 45 calendar days from the effective date of the vendor hold. Based on the results of the review, the department:

(A) certifies the program provider and removes the vendor hold if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's program provider agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(e) If the department determines that the program provider is out of compliance, at the end of the review exit conference, with twenty or more percent of the certification principles, including any principles found out of compliance in the previous review, the department does not certify the program provider, implements vendor hold, and applies Level II sanctions against the program provider.

(1) Under Level II sanctions:

(A) the program provider must complete corrective action within 30 calendar days after the review exit conference; and

(B) the department conducts an on-site follow-up review within 30 to 45 calendar days after the required correction date.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider and removes the vendor hold, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's program provider agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance.

(f) Notwithstanding subsections (b)-(e) of this section, if the department determines that a hazard to the health, safety, or welfare of one or more individuals exists and the hazard is not eliminated before the end of the review exit conference, the department denies certification of the program provider, initiates termination of the program provider's program provider agreement, implements vendor hold against the program provider, and, in conjunction with the local MRA, coordinates the provision of alternate services for individuals receiving TxHmL Program services from the program provider. A hazard to health, safety or welfare is any condition that could result in life-threatening harm, serious injury, or death of an individual or other person within 48 hours. If hazards are identified by the department during a review and the program provider corrects the hazards before the end of the review exit conference, the correction will be designated in the department's report of the review.

(g) Notwithstanding subsections (b)-(e) of this section, if the department determines that a program provider's failure to comply with one or more of the certification principles is of a serious or pervasive nature, the department may, at its discretion, take any action described in this section against the program provider. Serious or pervasive failure to comply includes but is not limited to conditions that have potentially dangerous consequences for individuals served by the program provider or conditions that affect a large percentage of individuals served by the program provider.

§419.578. Program Provider Certification Principles: Service Delivery.

(a) A program provider must serve eligible applicants or individuals who select the provider unless the program provider's enrollment has reached the enrollment capacity stated in its provider agreement.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the MRA; and

(2) a copy of the individual's current IPC as provided by the MRA.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR;

(2) develop, in conjunction with the individual, the individual's family or LAR written support methodologies that describe actions and methods to be used to accomplish outcomes identified in the PDP; and

(3) at least 14 calendar days prior to the implementation date of the IPC, submit such methodologies to the service coordinator.

(d) The program provider must assure that service provision is accomplished in accordance with the individual's PDP and the support methodologies described in subsection (c)(2) of this section.

(e) The program provider must assure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must assure that an individual's progress or lack of progress toward achieving his or her identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must assure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to persons without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must assure that an individual provides no training, supervision, or care to other individuals unless he or she is qualified and compensated in accordance with local, state and federal regulations.

(j) The program provider must assure that individuals who produce marketable goods and services during habilitation activities are paid at a wage level commensurate with that paid to persons without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program service components:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service component definition as specified in §419.555(a)-(j) of this title (relating to Definitions of TxHmL Program Service Components); and

(3) in accordance with an individual's PDP.

(o) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §409.542 of this title (relating to TDMHMR Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) Respite must not be provided in an institution such as an ICF/MR, skilled nursing facility, or hospital.

§419.579. Certification Principles: Qualified Personnel.

(a) The program provider must assure the continuous availability of trained and qualified employees and contractors to provide the service components in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to assure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice if that service provider:

(1) is qualified to provide the service component;

(2) will provide the service within the direct services portion of the applicable TxHmL Program rate; and

(3) will contract with or be employed by the program provider.

(d) The program provider must implement and maintain a plan for initial and periodic training of personnel that assures personnel are:

(1) trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services;

(2) knowledgeable of:

(A) acts that constitute abuse, neglect, or exploitation of an individual, as defined in 40 TAC Chapter 711, Subchapter A (relating to Introduction);

(B) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to the Texas Department of Protective and Regulatory Services (TDPRS) in accordance with §419.580(e) of this title (relating to Certification Principles: Quality Assurance); and

(C) methods to prevent the occurrence of abuse, neglect, and exploitation.

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and individuals;

(2) financial impropriety toward individuals;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who has a minimum of three years work experience in planning and providing direct services to people with mental retardation or other developmental disabilities, as verified by written professional reference(s), to oversee the provision of direct services to individuals.

(h) The program provider must assure that the provider of community support, day habilitation, employment assistance, supported employment, or respite has a high school diploma or its equivalent and that transportation is provided in accordance with applicable state laws.

(i) The program provider must assure that at least one of the following service components is provided by a person who is employed by, not contracting with, the program provider:

(1) community support;

(2) day habilitation;

(3) supported employment; or

(4) respite.

(j) The program provider must assure that dental treatment is provided by a dentist currently licensed by the Texas State Board of Dental Examiners.

(k) The program provider must assure that nursing is provided by a nurse who is currently:

(1) licensed as a registered nurse by the Board of Nurse Examiners for the State of Texas; or

(2) licensed as a vocational nurse by the Board of Vocational Nurse Examiners for the State of Texas.

(l) The program provider must assure that adaptive aids meet applicable standards of manufacture, design, and installation.

(m) The program provider must assure that the provider of behavioral support is currently:

(1) licensed as a psychologist by the Texas Board of Psychological Examiners;

(2) certified as a TDMHMR-certified psychologist in accordance with §415.161 of this title (relating to TDMHMR-certified psychologists); or

(3) certified as a behavioral analyst by the Behavior Analyst Certification Board, Inc.

(n) The program provider must assure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(o) The program provider must assure that a provider of specialized therapies is licensed by the appropriate State of Texas licensing authority for the specific therapeutic service provided by the provider.

(p) The program provider must comply with THSC, Chapters 250 and 253, including, but not limited to, taking the following action regarding certain applicants, employees and contractors:

(1) obtain criminal history record information that relates to the applicant, employee, or contractor and refrain from employing or contracting with, or immediately discharge, a person who has been convicted of an offense that bars employment under THSC, §250.006, or an offense that the program provider determines is a contraindication to the person's employment or contract with the program provider;

(2) search the Nurse Aide Registry maintained by the Texas Department of Human Services in accordance with THSC, Chapter 250, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or mistreated a consumer of a facility or has misappropriated a consumer's property; and

(3) search the Employee Misconduct Registry maintained by the Texas Department of Human Services in accordance with THSC, Chapter 253, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or exploited a consumer or has misappropriated a consumer's property.

§419.580. Certification Principles: Quality Assurance.

(a) The program provider must comply with the following obligations and, at the time of an individual's enrollment or a change in an individual's legal status, inform the individual or LAR of these obligations:

(1) to assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) to assist and cooperate with the individual's or LAR's request to transfer to another TxHmL Program provider;

(3) to assist the individual to access public accommodations or services available to all citizens;

(4) to assist the individual to manage his or her financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) to assure that any restriction affecting the individual is approved by the individual's service planning team prior to the imposition of the restriction;

(6) to inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) to inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;

(8) to provide the individual or LAR access to TxHmL Program records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) to assist the individual to communicate by phone or by mail during the provision of TxHmL Program services;

(10) to assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) to assure the individual is free from unnecessary restraints during the provision of TxHmL Program services;

(12) to regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) to receive and act on complaints about the program services provided by the program provider;

(14) to assure that the individual is free from abuse, neglect, or exploitation by program provider personnel;

(15) to provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy including but not limited to:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining professional advocacy services by organizations such as Texas Arc or Advocacy, Inc.; and

(E) obtaining information regarding legal guardianship.

(16) to provide the individual privacy during treatment and care of personal needs;

(17) to include the individual's LAR in decisions involving the planning and provision of TxHmL Program services; and

(18) to inform the individual or LAR of how to complain to the department or the MRA when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including

the department's telephone number to initiate complaints (1-800-252-8154) or the MRA telephone number to initiate complaints.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by the department, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must publicize and make available a process for receiving complaints, and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families, or LARs;

(2) the MRA;

(3) the program provider's personnel or service providers; and

(4) the general public.

(e) The program provider must assure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to TDPRS and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(2) all program provider personnel:

(A) are instructed to report to TDPRS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(C) report suspected abuse, neglect or exploitation as instructed.

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the alleged victim, including but not limited to:

(1) obtaining immediate and on-going medical and other appropriate supports for the alleged victim, as necessary;

(2) restricting access by the alleged perpetrator of the abuse, neglect or exploitation to the alleged victim or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim, the alleged victim's LAR, and the MRA of the allegation report and the actions that have been or will be taken.

(g) The program provider personnel must cooperate with the TDPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to:

(1) providing complete access to all TxHmL Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with TDPRS instructions.

(h) The program provider must:

(1) report the program provider's response to the finding of a TDPRS investigation of abuse, neglect, or exploitation to the department in accordance with department procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the TDPRS investigation finding, notify the alleged victim or LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if TDPRS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in 40 TAC Chapter 711, Subchapter M (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the TDPRS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(i) If the TDPRS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the TDPRS investigation to have committed abuse, neglect, and exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address and telephone number of the program provider;

(2) the effective date of the program provider agreement; and

(3) the name of the legal entity named on the program provider agreement.

(k) At least quarterly, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, temporary and permanent discharges, transfers, and unusual incidents to identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must assure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or his or her LAR is obtained before the use or disclosure.

(m) The program provider must assure that:

(1) the individual or his or her LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds prior to the charges being assessed; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must assure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior(s) targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior(s) targeted by the plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior(s);

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when desired behavior(s) are not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the MRA and the department by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

§419.582. Compliance with TxHmL Program Principles for Mental Retardation Authorities (MRAs).

(a) MRAs participating in the TxHmL Program must be in continuous compliance with the TxHmL Program Principles for Mental Retardation Authorities as described in §419.583 of this title (relating to TxHmL Program Principles for Authorities).

(b) The department conducts a compliance review at least annually of each MRA participating in the TxHmL Program.

(c) If any item of non-compliance remains uncorrected by the MRA at the time of the review exit conference, the MRA must, within 30 calendar days after the exit conference, submit to the department a plan of correction with timelines to implement the plan after approval by the department. The department may take action as specified in the performance contract between the MRA and the department if the MRA fails to submit or implement an approved plan of correction.

§419.583. TxHmL Program Principles for Mental Retardation Authorities.

(a) The MRA must:

(1) notify a potentially eligible individual of the requirement to seek enrollment in the TxHmL Program in accordance with §419.565 of this title (relating to Notification of Applicants Receiving General Revenue Services); and

(2) notify an applicant of a TxHmL Program vacancy in accordance with §419.566 of this title (relating to Notification of Applicants Registered on Waiver Program Waiting Lists).

(b) The MRA must process requests for enrollment in the TxHmL Program in accordance with §419.567 of this title (relating to Process for Enrollment).

(c) The MRA must have a mechanism to assure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all MRA staff who may assist an individual or LAR in such process.

(d) The MRA must assure the development and completion of the initial IPC and all necessary assessments within 45 working days of the individual or LAR indicating his or her choice of TxHmL Program services over ICF/MR services in accordance with §419.565 of this title (relating to Notification of Applicants Receiving General Revenue Funded Services) or §419.566 of this title (relating to Notification of Applicants Registered on Waiver Program Waiting Lists).

(e) The MRA must submit to the department necessary documentation for an applicant's enrollment within 10 working days after the applicant's or LAR's selection of a TxHmL Program provider.

(f) The MRA must assure its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(g) The MRA must assure that an individual or LAR is informed orally and in writing of the following processes for filing complaints about service provision:

(1) processes for filing complaints with the MRA about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the MRA to file a complaint;

(B) the toll-free telephone number of the department to file a complaint; and

(C) the toll-free telephone number of TDPRS (1-800-647-7418) to file a complaint of abuse, neglect, or exploitation.

(h) The MRA must maintain for each individual:

(1) a current IPC;

(2) a current PDP;

(3) a current MR/RC Assessment; and

(4) current service information.

(i) For an individual receiving TxHmL Program services within the MRA's local service area, the MRA must provide the individual's program provider a copy of the individual's current PDP, IPC, and MR/RC Assessment.

(j) The MRA must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 412, Subchapter J of this title (relating to Service Coordination); and

(2) have received training about the TxHmL Program, including but not limited to the requirements of this subchapter and the TxHmL Program service component definitions as specified in §419.555 of this title (relating to Definitions of TxHmL Program Service Components).

(k) The MRA must assure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP;

(2) coordinates the development and implementation of the individual's PDP;

(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;

(4) coordinates and develops an individual's IPC based on the individual's PDP;

(5) coordinates and monitors the delivery of TxHmL Program and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(7) records each individual's progress;

(8) develops discharge and transfer plans, when necessary; and

(9) keeps records as they pertain to the implementation of an individual's PDP.

(l) The MRA must assure an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(m) The service coordinator must comply with the following obligations and, at the time of an individual's enrollment or change in the individual's legal status, inform the individual or LAR of these obligations:

(1) to assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) to assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) to inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual may be discharged from the TxHmL Program as described in §419.570 of this title (relating to Permanent Discharge from the TxHmL Program);

(4) to assure that the individual or LAR participate in developing a personalized PDP and IPC that meets the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) to assure that a restriction affecting the individual is approved by the individual's service planning team prior to the imposition of the restriction;

(6) to assure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing;

(7) to assure that, if needed, the individual or LAR participates in developing a discharge plan that addresses assistance for the individual after he or she is discharged from the TxHmL Program; and

(8) to inform the individual or LAR that the service coordinator will assist the individual or LAR to transfer the individual's TxHmL Program services from one program provider to another program provider as chosen by the individual or LAR.

(n) When a change to an individual's PDP or IPC occurs or is needed, the service coordinator must communicate the need for the change to the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(o) At least 30 calendar days prior to the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) submit the PDP to the program provider for completion of necessary support methodologies.

(p) The service coordinator must:

(1) review the status of an individual who is temporarily discharged at least every 90 calendar days following the effective date of the temporary discharge and document in the individual's record the reasons for continuing the discharge; and

(2) if the temporary discharge continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to the department for review and approval to continue the temporary discharge status.

§419.584. References.

Regulations and statutes referenced in this subchapter include:

(1) §1915(c) of the Social Security Act;

(2) Fair Labor Standards Act;

(3) Omnibus Budget Reconciliation Act of 1990, 42 United States Code §1396a(w)(1), regarding advanced directives under state plans for medical assistance;

(4) THSC, Chapters 250 and 253, §250.006;

(5) THSC, §533.035(b);

(6) THSC, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A);

(7) Chapter 409, Subchapter B of this title (relating to Adverse Actions);

(8) §409.507(d) of this title relating to (Level of Need Assignment);

(9) §409.523 of this title (relating to Maintenance of MRLA Program Waiting List);

(10) §409.542 of this title (relating to TDMHMR Approval of Residences);

(11) Chapter 412, Subchapter J of this title (relating to Service Coordination);

(12) Chapter 415, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports -- Mental Retardation Priority Population and Related Conditions);

(13) Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings);

(14) Chapter 419, Subchapter Q of this title (relating to Enrollment of Medicaid Waiver Program Providers);

(15) §419.165 of this title (relating to Maintenance of HCS Program Waiting List);

(16) §419.203 of this title (relating to Definitions);

(17) §419.237(c) of this title (relating to Level of Care);

(18) §419.238 of this title (relating to Level of Care Criteria I);

(19) 1 TAC §355.743 (relating to Reimbursement Methodology for Service Coordination);

(20) 40 TAC Chapter 711, Subchapter A (relating to Introduction);

(21) 40 TAC Chapter 711, Subchapter M (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated);

(22) TxHmL Provider Agreement; and

(23) *TxHmL Service Definitions and Billing Guidelines*.

§419.585. Distribution.

(a) Copies of this subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of the department's Central Office;

(3) chairs of boards of trustees of local MRAs;

(4) executive directors of local MRAs; and

(5) interested advocates and advocacy organizations.

(b) The executive directors of local MRAs are responsible for distributing copies of this subchapter to:

(1) appropriate staff;

(2) program providers;

(3) agents;

(4) any individual receiving services and supports who requests a copy;

(5) family members and advocates of individuals who request a copy;

(6) any employee who requests a copy; and

(7) any other person who requests a copy.

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 23, 2002.

TRD-200206192
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 206-5232

♦ ♦ ♦

SUBCHAPTER Q. ENROLLMENT OF MEDICAID WAIVER PROGRAM PROVIDERS

25 TAC §419.709

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §419.709, concerning additional provider certification.

The amendments revise the department's policy regarding the certification and provisional certification of waiver program providers to address the planned implementation of Texas Home Living (TxHmL) Program, a planned new waiver program under §1915(c) of the Social Security Act. The amendments will permit the department to provisionally certify a mental retardation authority (MRA) as a TxHmL Program provider if the MRA requests provisional certification and has a home and community support services agency (HCSSA) license from the Texas Department of Human Services. The department also may choose to provisionally certify as a TxHmL Program provider a provider that is provisionally certified in one or more of the department's other waiver programs if the provider requests provisional certification. In addition, a program provider certified as a provider in one or more of the department's other waiver programs may be certified as a TxHmL Program provider if the provider requests the certification. The department's other waiver programs are the Home and Community-based Services (HCS) Program, the Home and Community-based Services - OBRA (HCS-O) Program, and the Mental Retardation Local Authority (MRLA) Program.

The TxHmL Program was developed in response to a provision of Executive Order RP 13 issued by Governor Rick Perry on April 18, 2002, that directs the Texas Health and Human Services Commission to work with the department to develop a new "selected essential services waiver" using existing general revenue funds that will serve individuals with mental retardation on the department's waiting list for Medicaid waiver services. Rules that would implement TxHmL are published elsewhere in this issue of the *Texas Register* for public review and comment.

Cindy Brown, chief financial officer, has determined that for each year of the first five year period that the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local government. It is not anticipated that the proposed amendments will have an adverse economic effect on small businesses or micro-businesses. It is not anticipated that there will be any additional economic cost to persons required to comply

with the amendments. It is not anticipated that the amendments will affect a local economy.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the amendments are in effect, the public benefit expected will be availability of providers statewide to provide Medicaid services under the new waiver program to individuals whose names are on the waiver waiting list and individuals whose services currently are funded with general revenue.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, October 25, 2002, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Medicaid Administration, at least 72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning the proposed new sections must be submitted in writing to Linda Logan, director, Policy Development, by mail to Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the TxHmL Program.

The proposed amendments affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.709. Additional Provider Certification.

(a) Upon the request of a certified HCS provider, TDMHMR may provisionally certify the HCS provider as an HCS-O provider.

(b) Upon the request of a certified HCS-O provider, TDMHMR may provisionally certify the HCS-O provider as an HCS provider.

(c) TDMHMR may [~~shall~~] provisionally certify as an MRLA provider a provisionally certified HCS or HCS-O provider authorized to serve individuals residing in a county added to the service area of the MRLA program.

(d) TDMHMR may [~~shall~~] certify as an MRLA provider a certified HCS or HCS-O provider authorized to serve individuals residing in a county added to the service area of the MRLA program.

(e) Upon request of an MRA, TDMHMR may provisionally certify as a Texas Home Living (TxHmL) Program provider an MRA if it has a HCSSA license.

(f) Upon request of a provisionally certified HCS, HCS-O, or MRLA program provider, TDMHMR may provisionally certify an HCS, HCS-O, or MRLA program provider as a TxHmL provider.

(g) Upon request of a certified HCS, HCS-O, or MRLA program provider, TDMHMR may certify an HCS, HCS-O, or MRLA program provider as a TxHmL provider.

(h) [~~(e)~~] Corrective actions or sanctions pending at the time of certification or provisional certification under subsection (c) or (d) will remain in effect until resolved. If not resolved, TDMHMR may impose sanctions in accordance with §409.537 of this title (related to Sanctions).

(i) [~~(f)~~] TDMHMR may deny provisional certification or certification for good cause, which includes but is not limited to corrective actions or sanctions that are pending against the HCS, [~~or~~] HCS-O, or MRLA provider [~~in accordance with subsections (a) or (b) of this section~~].

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206193
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 206-5232

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.45

The Texas Commission on Environmental Quality (commission) proposes an amendment to §290.45.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Section 290.45 sets out the minimum production, pressurization, and storage capacity requirements for public drinking water systems. The requirements for systems using groundwater are different from those using surface water. Within those categories, the requirements vary depending on the size of the system. There can be instances where a public water system can provide adequate drinking water supplies at system capacity levels less than minimum levels prescribed in the rules. Conversely, there can also be instances where a public water system needs

system capacities at levels greater than prescribed in the rules in order to provide adequate drinking water supplies.

Provisions for requesting an exception to minimum requirements are found in §290.39(l). Adopted in 1978, the section stipulates that requests are considered on a case-by-case basis. The commission can approve requests demonstrating that public health will not be compromised and that no degradation of service or water quality will result. These requests have been processed historically at the staff level, and in limited circumstances, revoked via staff letter notification.

In 1992, §290.45(g) was added which provides specific information to be addressed by a water system owner/operator requesting an exception to the minimum capacity requirements. Another revision, effective in May 2002, replaced the term "exception" with alternative capacity requirement in §290.45(g). The information includes daily production data (three years); data acquired in the last drought period in the area; peak demand and actual demand data; unusual demand data (fire flows, major line breaks, etc.); and any other site/condition-specific information to support the request. To help evaluate the data submitted, staff developed guidance which has been in place since 1998.

Some public water system owner/operators desired clarification of the formal staff review protocol and expressed concern that the review process could be too long. Some public water system owner/operators have also expressed concern that some of the rules concerning minimum capacity requirements for wholesale water suppliers who also have retail connections are unclear and have led to inconsistent interpretations and application.

The proposed rulemaking is intended to address these concerns, clean up formatting and sentence structure; more explicitly state the conditions under which the executive director can establish capacity operating levels higher than the minimum requirements expressed in the rule; clarify minimum water system capacity requirements for wholesale water suppliers who also supply retail connections; clarify public water system and wholesaler responsibilities for meeting production requirements; specify the process for a public water system to request an alternative capacity requirement; specify exactly how an alternative capacity requirement is to be determined; and specify the process for review and revocation or revision of an alternative capacity requirement by the executive director.

SECTION DISCUSSION

The proposed amendments to §290.45, Minimum Water System Capacity Requirements, include revisions throughout the section to clean up the rule so that sentence structure and format are consistent throughout the section and that the rule conforms to *Texas Register* style guidelines. These types of changes include, but are not limited to, grammatical, acronym, and capitalization corrections and restructuring of sentences (without changing the meaning). Also throughout the section, the term "executive director" replaces the term "commission" for consistency with the definitions in 30 TAC Chapter 3. These types of changes will not be discussed any further in this preamble.

The proposed amendments to §290.45(a) reformat the subsection for improved readability and more explicitly state the conditions which may cause the executive director to establish capacity operating levels higher than the minimum requirements expressed in the rule. The existing rule states that the executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, if the system's maximum daily demand exceeds its total production and treatment capacity, or if the system is unable to maintain a minimum pressure of 20 psi during fire fighting, line flushing, and other unusual conditions. The proposed new language adds that the executive director may also require additional capacity requirements using the method of calculation described in proposed §290.45(g)(2), if there are repeated customer complaints regarding inadequate pressure, or if the executive director receives a request for a capacity evaluation from customers of the system.

The proposed amendment to §290.45(c) revises the term "quantity requirement" to "capacity requirement" for consistency with other language throughout the section.

The proposed amendment to §290.45(d) revises the phrases "can supply" and "can meet" to "meets or exceeds" to more clearly state the requirement.

The proposed amendment to §290.45(e), regarding water wholesalers, clarifies minimum water system capacity requirements for wholesale water suppliers who also supply retail connections. The current language in subsection (e)(2) is proposed to be deleted and replaced with language which states that for wholesale water suppliers, water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

The proposed amendment to §290.45(f)(4) clarifies that a uniform purchase rate identified in a purchase water contract will be acceptable in the absence of a daily purchase rate. This other category of purchase rate will be considered by the executive director when evaluating whether a public water system which purchases treated water from a wholesaler is meeting capacity requirements.

Proposed new §290.45(f)(6) clarifies that in a purchase water situation, the purchaser is responsible for meeting production requirements. If additional capacity to meet increased demands is not available from the wholesaler, the purchaser must obtain that capacity from other entities, from new wells, or surface water treatment facilities to meet requirements. However, when the purchase contract prohibits a purchaser from obtaining water from other sources, the responsibility for meeting production requirements passes to the wholesaler. Existing subsection (f)(6) is proposed to be renumbered as subsection (f)(7).

The proposed amendments to §290.45(g), regarding alternative capacity requirements, delete the reference to §290.39(1) as unnecessary because the rule only needs to state that the system must demonstrate that approval of an alternative capacity requirement will not compromise public health or result in the degradation of service or water quality. New language is also proposed in subsection (g) to state that alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in §290.45(b)(1), or for noncommunity water systems as specified in §290.45(c) and (d). Water systems without storage are excluded because they must rely on the well production capacity alone to meet instantaneous system demands. Water systems without storage lack the buffering capacity to meet peak system demands which storage and service pumps provide by their ability to store water during periods of lower usage for withdrawal

during periods in which the system demand exceeds total production capacity. Alternative capacity requirements are unavailable for noncommunity water systems because these systems are not required to record and maintain the water usage data necessary for evaluating the appropriateness of an alternative capacity requirement.

The proposed amendment to subsection (g)(1)(D) deletes the existing language and adds new language to clarify the type of data required. The request must include the actual number of active connections for each month during the three years of production data.

The proposed amendment to subsection (g)(1)(F) replaces the general requirement that an alternative capacity requirement provide an equivalent level of service with a more specific numerical pressure standard of 35 psi under normal operating conditions with a minimum of 20 psi during fire flows or line breaks, which is an existing requirement of the rule.

A proposed new §290.45(g)(1)(G) is added to require that all data relied upon in making a proposal be submitted with the request for an alternative capacity requirement.

A proposed new subsection (g)(2) is added to specify that alternative capacity requirements for existing public water systems must be based on the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of subsection (g)(3). The maximum daily demand must be determined from daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

Proposed new subparagraphs (A) - (C) of subsection (g)(2) formalize existing staff review procedure by specifying the computations involved in determining maximum daily demand, calculating an equivalency ratio, and establishing an alternative capacity requirement. Proposed new paragraph (2)(A) defines the maximum daily demand as the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Days having unusual demands such as fire flows or major main breaks are not considered when establishing the maximum daily demand. Proposed new paragraph (2)(B) defines an equivalency ratio as the maximum daily demand expressed in gallons per minute (gpm) per connection multiplied by a safety factor and divided by 0.6 gpm per connection. The safety factor is 1.15 unless it is documented that the existing system capacity will be adequate for the next five years, in which case the safety factor may be reduced to 1.05. Proposed new paragraph (2)(C) specifies that alternative capacity requirements must be calculated by multiplying the equivalency ratio by the appropriate minimum capacity requirements specified in §290.45(b). As an example, a groundwater system with 200 connections and an actual maximum daily demand of 0.36 gpm per connection would have a calculated equivalency ratio of 0.69, which would produce the following alternative capacity requirements: well capacity, 0.41 gpm per connection; total storage capacity, 138 gallons per connection; total service pumping capacity, 1.38 gpm per connection; and pressure tank capacity, 13.8 gallons per connection. Standard rounding methods are used to round calculated alternative capacity requirement values to the nearest one-hundredth. In the example given, the calculated well capacity of 0.414 gpm per connection is rounded to 0.41 gpm per connection.

Proposed new subsection (g)(3) establishes the additional requirements for proposed alternative capacity requirements which are submitted by licensed professional engineers in paragraph (3)(A) and (B). Proposed paragraph (3)(A) requires that licensed professional engineers sign and seal their requests certifying that the alternative capacity requirements have been established in accordance with §290.45(g). Proposed paragraph (3)(B) allows the substitution of data from a comparable water system if the water system is new or if at least 36 consecutive months of data is not available. The engineer is required to certify that the system is comparable in terms of prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable system shall not exhibit any of the conditions listed in proposed §290.45(g)(6)(A), such as pressure below 35 psi, water outages due to high use, mandatory water rationing, failure to meet a minimum capacity requirement, or changes in water supply conditions or usage patterns which create a potential threat to public health.

Proposed new subsection (g)(4) provides the criteria which will be used in considering requests for alternative capacity requirements. Proposed new paragraph (4)(A) states that, for requests submitted by a licensed professional engineer, the alternative capacity requirements submitted by the engineer will automatically become effective if the executive director fails to provide written acceptance or denial within 90 days from the date the request was submitted. Automatic approval is proposed only for requests for alternative capacity requirements submitted and certified by a licensed professional engineer. Because a licensed professional engineer is required to certify that the proposed alternative capacity requirements meet the requirements in §290.45(g), staff should be able to review these requests within 90 days. Whereas, a request submitted by a non-engineer may take more review time because the majority of these requests only provide data and ask for a staff determination of an appropriate alternative capacity requirement.

Proposed new paragraph (4)(B) specifies the executive director's responsibilities should a request for an alternative capacity requirement be denied. The executive director shall identify the reasons for denial and allow 45 days for the public water system to respond to the denial. If no response is received within 45 days, the denial is final. If a response is received within 45 days, the executive director shall have 60 days from the receipt of the response to mail a final written approval or denial of the request.

Existing subsection (g)(2) is proposed to be renumbered as subsection (g)(5) and amended to clarify that special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.

Existing subsection (g)(3) is proposed to be renumbered as (g)(6) and amended to establish a process for review and revocation or revision of an alternative capacity requirement by the executive director. Although a review process has been in place, it was not specified in the rule. This revised subsection lists conditions which may constitute grounds for revocation or revision of an alternative capacity requirement and defines the review process.

Proposed new paragraph (6)(A) specifies the conditions which may constitute grounds for revocation or revision of an alternative capacity requirement. The conditions include documented

pressure below 35 psi at any time not related to line repair, except during fire fighting, when it cannot be less than 20 psi; water outages due to high water usage; mandatory water rationing due to high customer demand or over-taxed water production or supply facilities; failure to meet a minimum capacity requirement or an established alternative capacity requirement; changes in water supply conditions or usage patterns which create a potential threat to public health; or any other condition where the executive director finds that the alternative capacity requirement has compromised the public health or resulted in a degradation of service or water quality.

Proposed new paragraph (6)(B) outlines the process for revocation or revision of an alternative capacity requirement. The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action. The public water system has 30 days from the date the written notice is mailed to respond to the proposed action. The public water system also has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed. After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

Proposed new paragraph (6)(C) states that if the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the decision to revoke or revise an alternative capacity requirement at any time, without following the process in proposed paragraph (6)(A), in order to assure protection of public health and safety.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that, for the first five-year period the proposed amendment is in effect, there will be no significant additional fiscal implications for the agency or any other unit of state and local government due to administration and enforcement of the proposed amendment.

The proposed amendment is intended to clarify certain provisions regarding public water systems which purchase treated water to meet all or part of the minimum capacity requirements, to provide an alternative method based upon actual system demand for meeting the minimum capacity requirements, to formalize existing staff review process for proposed alternative capacity requirements, and to specify the process for review and revocation or revision of an alternative capacity requirement. The commission does not anticipate significant fiscal implications for any unit of government, because this rulemaking is intended to formalize processes that are already in use.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be a clearer understanding of how water suppliers can have system-specific minimum capacity requirements established based upon their actual peak daily system water demands.

The proposed amendment is intended to clarify certain provisions regarding public water systems which purchase treated water to meet all or part of the minimum capacity requirements, to provide an alternative method based upon actual system demand for meeting the minimum capacity requirements, to formalize existing staff review process for proposed alternative capacity requirements, and to specify the process for review and revocation or revision of an alternative capacity requirement. The commission does not anticipate significant fiscal implications for any individual or business, because this rulemaking is intended to formalize processes that are already in use.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no significant adverse fiscal implications to small or micro-business as a result of implementing the proposed amendment. The proposed amendment is intended to clarify certain provisions regarding public water systems which purchase treated water to meet all or part of the minimum capacity requirements, to provide an alternative method based upon actual system demand for meeting the minimum capacity requirements, to formalize existing staff review process for proposed alternative capacity requirements, and to specify the process for review and revocation or revision of an alternative capacity requirement. The commission does not anticipate significant fiscal implications for any small or micro-business, because this rulemaking is intended to formalize processes that are already in use.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rule is primarily to clarify certain provisions regarding public water systems which purchase treated water to meet all or part of the minimum capacity requirements, to provide an alternative method based upon actual system demand for meeting the minimum capacity requirements, to formalize an existing staff review process for proposed alternative capacity requirements, and to specify the process for review and revocation or revision of an alternative capacity requirement by the executive director. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed rule does not exceed a federal standard because no applicable federal standards exist. The proposed rule does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed rule was not developed solely under the general powers of the agency,

but also under the specific authority of Texas Health and Safety Code, §341.0315, which requires the commission to ensure that public drinking water supply systems provide an adequate and safe drinking water supply. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to provide an alternative method based upon actual system demand for meeting the minimum capacity requirements. The proposed amendments formalize an existing staff review process for proposed alternative capacity requirements and specify the process for review and revocation or revision of an alternative capacity requirement by the executive director. The proposed amendments also clarify existing provisions regarding the minimum capacity requirements for public water systems which purchase treated water. Promulgation and enforcement of these amendments will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-049- 290-WT. Comments must be received by 5:00 p.m., November 4, 2002. For further information, please contact Kathy Ramirez, Regulation Development Section, (512) 239-6757.

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas; and under Texas Health and Safety Code, §341.0315, which requires the commission to ensure that public drinking water supply systems provide an adequate and safe drinking water supply.

The proposed amendment implements Texas Health and Safety Code, §341.0315, relating to Public Drinking Water Supply System Requirements; and TWC, §5.103, relating to Rules.

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions [~~Provisions~~].

(1) The [~~following~~] requirements in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes. The capacities listed in this section [~~below~~] are minimum requirements only.

(2) The executive director will require additional [~~Additional~~] supply, storage, service pumping, and pressure maintenance facilities [~~will be required by the commission~~] if a normal operating pressure of 35 pounds per square inch (psi) [~~psi~~] cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional [~~Additional~~] capacities [~~will also be required~~] if the system is unable to maintain a minimum pressure of 20 psi during fire fighting, line flushing , and other unusual conditions.

(3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.

(4) Throughout this section [~~In all sections governing quantity requirements~~], total storage capacity does not include pressure tank capacity.

(b) Community water systems [~~Water Systems~~].

(1) Groundwater supplies must meet the following [~~supply~~] requirements. [~~are as follows:~~]

(A) If fewer than 50 connections without ground storage, the system must meet [~~have~~] the following requirements:

(i) a well capacity of 1.5 gallons per minute (gpm) per connection; and

(ii) (No change.)

(B) If fewer than 50 connections with ground storage, the system must meet the following requirements [~~have the following~~]:

(i) a well capacity of 0.6 gpm [~~gallon per minute~~] per connection;

(ii) (No change.)

(iii) two or more service pumps having a total capacity of 2.0 gpm [~~gallons per minute~~] per connection; and

(iv) (No change.)

(C) For 50 to 250 connections, the system must meet the following requirements:

(i) a [~~A~~] well capacity of 0.6 gpm [~~gallon per minute~~] per connection; [~~must be provided.~~]

(ii) a [~~A~~] total storage capacity of 200 gallons per connection; [~~must be provided.~~]

(iii) [~~Each pump station or pressure plane shall have~~] two or more pumps having a total capacity of 2.0 gpm [~~gallons per minute~~] per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm [~~gallons per minute~~] per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and [~~.~~]

(iv) an [~~An~~] elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection [~~must be provided~~].

(D) For more than 250 connections, the system must meet the following requirements:

(i) two [~~Two~~] or more wells having a total capacity of 0.6 gpm [~~gallons per minute~~] per connection [~~must be provided~~].

Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm [gallons per minute] for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm [gallons per minute] per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In [; in] this case, the systems' capacities will be rated as though a single system existed; [.]

(ii) a [A] total storage capacity of 200 gallons per connection; [must be provided.]

(iii) [Each pump station or pressure plane shall have] two or more pumps that have a total capacity of 2.0 gpm [gallons per minute] per connection or that have a total capacity of at least 1,000 gpm [gallons per minute] and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm [gallons per minute] per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; [.]

(iv) an [An] elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection [must be provided]. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section [§290.45(g)(2) of this chapter] are met; and [.]

(v) emergency [Emergency] power [is required] for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm [gallons per minute] per connection to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm [gallons per minute] for each connection in the combined system. Emergency power facilities in systems serving 1,000 connections or greater must be serviced and maintained in accordance with level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) [NFPA] 110 standards. Although not required, compliance with NFPA 110 standards is highly recommended for systems serving less than 1,000 connections. Logs of all emergency power use and maintenance must be maintained and kept on file for a period of not less than three years. These records must be made available, upon request, for executive director [commission] review.

(E) Mobile home parks with a density of eight [8] or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet [have] the following requirements:

(i) a well capacity of 1.0 gpm [gallon per minute] per connection; and

(ii) (No change.)

(F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a [A] well capacity of 0.6 gpm [gallons per minute] per connection [must be provided]. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm [gallons per minute] for each connection in the combined system; [.]

(ii) a [A] total storage of 200 gallons per connection; [must be provided.]

(iii) at [At] least two service pumps with a total capacity of 2.0 gpm [gallons per minute] per connection; and [must be provided.]

(iv) a [A] pressure tank capacity of 20 gallons per connection [must be provided].

(2) Surface [All surface] water supplies must meet [provide] the following requirements:

(A) a raw water pump capacity of 0.6 gpm [gallon per minute] per connection with the largest pump out of service; [.]

(B) a treatment plant capacity of 0.6 gpm [gallon per minute] per connection under normal rated design flow; [.]

(C) transfer pumps (where applicable) with a capacity of 0.6 gpm [gallon per minute] per connection with the largest pump out of service; [.]

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity; [.]

(E) a total storage capacity of 200 gallons per connection; [.]

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm [gallons per minute] per connection or that have a total capacity of at least 1,000 gpm [gallons per minute] and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm [gallon per minute] per connection are required at each pump station or pressure plane; [.]

(G) an [An] elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection [must be provided]. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section [§290.45(g)(2) of this chapter] are met; and [.]

(H) emergency [Emergency] power [is required] for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm [gallons per minute] per connection to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm [gallons per minute] for each connection in the combined system. Emergency power facilities in systems serving 1,000 connections or greater must be serviced and maintained in accordance with level 2 maintenance requirements contained in the current NFPA 110 standards. Although not required, compliance with NFPA 110 standards is highly recommended for systems serving less than 1,000 connections. Logs of all emergency

power use and maintenance must be maintained and kept on file for a period of not less than three years. These records must be made available, upon request, for executive director [commission] review.

(c) Noncommunity water systems serving transient accommodation units. The following water capacity [quantity] requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements [Ground water supply requirements are as follows:]

(A) If fewer than 100 accommodation units without ground storage, the system must meet [have] the following requirements:

(i) a well capacity of 1.0 gpm [gallon per minute] per unit; and

(ii) a pressure tank capacity of ten [10] gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet [have] the following requirements:

(i) a well capacity of 0.6 gpm [gallons per minute] per unit;

(ii) a ground storage capacity of 35 gpm [gallons per unit];

(iii) two or more service pumps which have a total capacity of 1.0 gpm [gallon per minute] per unit; and

(iv) a pressure tank capacity of ten [10] gallons per unit.

(2) Surface [All surface] water supplies, regardless of size, must meet [have] the following requirements:

(A) a raw water pump capacity of 0.6 gpm [gallons per minute] per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm [gallons per minute] per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gpm [gallons per minute] per unit with the largest pump out of service;

(D) (No change.)

(E) two or more service pumps with a total capacity of 1.0 gpm [gallon per minute] per unit; and

(F) a pressure tank capacity of ten [10] gallons per unit with a minimum requirement of 220 gallons.

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed. [:]
Figure: 30 TAC §290.45(d)(1)

(2) Groundwater supplies must meet the following [supply] requirements [are as follows].

(A) If fewer than 300 persons per day are served, the system must meet [have] the following requirements:

(i) a well capacity which meets or exceeds [can supply] the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director [commission].

(B) If 300 or more persons per day are served, the system must meet [have] the following requirements:

(i) a well capacity which meets or exceeds [can supply] the maximum daily demand;

(ii) (No change.)

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand [must be provided];

(iv)-(v) (No change.)

(3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, must [shall] meet the following requirements:

(A) a raw water pump capacity which meets or exceeds [can meet] the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which meets or exceeds [can meet] the system's maximum daily demand;

(C)-(E) (No change.)

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director [commission].

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations.

(2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

[(2) For systems supplying both retail and wholesale connections, the commission's production, treatment and service pumping capacity requirements for the system's wholesale connections are in addition to the commission's requirements for the system's retail connections.]

(3) (No change.)

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The water purchase contract must [shall] be available to the executive director [commission] in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and

the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.

(2)-(3) (No change.)

(4) The maximum authorized daily purchase rate specified in the contract , or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must [shall] be at least 0.6 gpm [gallons per minute] per connection.

(5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm [gallons per minute] per connection or provide at least 1,000 gpm [gallons per minute] and be able to meet peak hourly demands, whichever is less.

(6) The purchaser is responsible for meeting all production requirements. If additional capacity to meet increased demands is unavailable from the wholesaler, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting all production requirements.

(7) [(6)] All other minimum capacity requirements specified in this section shall apply.

(g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality [as specified in §290.39(l) of this title (relating to General Provisions)]. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.

(1) Alternative capacity requirements [requirement] for public water systems may be granted upon request to and approval by the executive director. The request to use an alternative capacity requirement must include:

(A) [Provision of] a detailed inventory of the major production, pressurization, and storage facilities utilized by the system; [.]

(B) [Provision of] records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand; [.]

(C) [The executive director may also require] data acquired during the last drought period in the region, if required by the executive director; [.]

(D) the actual number of active connections for each month during the three years of production data; [The peak demand days over the study period must utilize data on the number of active connections to determine the actual demand per connection experienced.]

(E) description [Description] of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period; [.]

(F) any [Any] other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during fire fighting when it cannot be less than 20 psi; and [a level of service that is equivalent to the level of service provided by the minimum capacity requirements contained in this section.]

(G) a copy of all data relied upon for making the proposed determination.

(2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

(A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.

(B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.

(C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.

(3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.

(A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.

(B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.

(4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.

(A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements

to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.

(B) If the executive director denies the request:

(i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;

(ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and

(iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.

(5) [(2)] Although elevated storage is the preferred method of pressure maintenance for systems of over 2500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement [using an alternative capacity requirement to meet minimum pressure maintenance requirements].

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 35 psi, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the executive director [commission] for review.

(iii) For existing systems, the system's licensed professional engineer must provide continuous pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed shall not be less than three years.

(B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption.

(i) The facilities must be serviced and maintained in accordance with level 2 maintenance requirements contained in the current NFPA 110 standards and the manufacturers' [manufacturers] recommendations.

(ii) The switching gear must be capable of bringing the emergency power generating equipment on-line [on line] during a power interruption such that the pressure in the distribution network does not fall below 20 psi at any time.

(iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the facilities under-load for a period of at least eight [8] hours must always be maintained on site.

(iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.

(C) Battery powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director [commission]. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load ["under-load"] testing and maintenance.

(D) An emergency response plan must be submitted detailing procedures to be followed and individuals to be contacted in the event of loss of normal power supply.

(6) [(3)] Any alternative capacity requirement granted under this subsection is [shall be] subject to review and revocation or revision by the executive director [at the time of each routine sanitary survey of the system. Failure to demonstrate satisfactory survey findings may result in revocation of the alternative capacity requirement]. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

(A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:

(i) documented pressure below 35 psi at any time not related to line repair, except during fire fighting when it cannot be less than 20 psi;

(ii) water outages due to high water usage;

(iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;

(iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;

(v) changes in water supply conditions or usage patterns which create a potential threat to public health; or

(vi) any other condition where the executive director finds that the alternative capacity requirement has compromised the public health or resulted in a degradation of service or water quality.

(B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or

other threat to public health and safety is imminent under subparagraph (C) of this paragraph.

(i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.

(ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.

(iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.

(iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

(C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

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 17, 2002.

TRD-200206046
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 239-5017

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (board) proposes amendments to 31 TAC §363.2 and §363.502 and new §363.510, concerning Financial Assistance Programs and projects funded from the Economically Distressed Areas Account. Amendments to §363.2 and §363.502 are proposed to update definitions. New §363.510, Financial, Managerial, and Technical Training Requirements, is proposed to create a new condition pursuant to which financial assistance for projects funded from the Economically Distressed Areas Account, authorized by Chapter 17, Subchapter K of the Texas Water Code, may be provided. The changes are intended to implement the provisions of Senate Bill 649 which authorized the board to require the governing board and management staff of political subdivisions that apply for or receive financial assistance through the economically distressed areas program to take training to insure the project will meet program requirements or remain financially viable.

Amendment to §363.2 is proposed to replace Texas Natural Resource Conservation Commission with the agency's new name Texas Commission on Environmental Quality. New paragraph (7) is proposed to existing §363.502, Definitions of Terms, to define the term "operating entity" as the individuals that serve on the governing body of the political subdivision which has applied or is receiving financial assistance from the economically distressed areas program or the individuals that are employed by the political subdivision to perform the financial, managerial, or technical tasks on behalf of the political subdivision.

New §363.510, Financial, Managerial, and Technical Training Requirements, is proposed to be added to the chapter. New §363.510 subsection (a) identifies the time at which the board will determine whether to require an operating entity to take training, which are the times authorized by Senate Bill 649 and therefore the only times at which the board can make the determination to require training. New subsection (b) implements the provisions of Senate Bill 649 that authorize the board to require training of the operating entity based on its own assessment or based on an assessment of the Texas Commission on Environmental Quality (commission), formerly the Texas Natural Resource Conservation Commission. In order to make an assessment of the operating entity under this subsection, the executive administrator will review documentation submitted with the particular request or application of the political subdivision and any other documentation or information that is available regarding the compliance of the political subdivision with applicable statutes, regulations, or the terms and conditions of bonds, loan agreements or grant agreements. Under this new subsection, the executive administrator will prepare a recommended assessment for the board that identifies any lacking financial, managerial, or technical capacity, the basis for such conclusion, the training that will improve the lacking capacity, and the positions on the operating entity that will be required to take the training.

New §363.510(c) identifies the actions that the board may take with respect to action requested by the political subdivision and the steps required of the political subdivision if the board requires training of the operating entity of the political subdivision. New §363.510(d) establishes the procedure of the board to identify entities that can provide financial, managerial, and technical training for water or wastewater utility providers.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these changes are in effect there will be no fiscal implications on state government as a result of enforcement and administration of the sections. There may be an effect to local governments for the first five-year period the rule will be in effect that cannot be quantified. Those local governments and communities with training budgets will have no significant impacts; others may have to generate or commit other revenues to meet a training requirement. It is not known how many of local governments applying for or receiving EDAP assistance will be required to undergo training; therefore, a financial impact cannot be determined at this time.

Ms. Callahan has also determined that for the first five years the changes as proposed are in effect the public benefit anticipated as a result of implementing the amended section will be the successful completion and long-term viability of water and wastewater systems constructed with financial assistance from

the economically distressed areas account. Ms. Callahan has further determined there will be no increased economic cost to small businesses or individuals required to comply with the sections as proposed because the provisions apply only to political subdivisions applying for board assistance.

It is estimated that the rule amendment will not adversely affect local economies because the rule pertains to a voluntary program and will be utilized by governmental entities to access the benefits of a non-repayable financial assistance program administered by the board.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, (512) 936-0863, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at (512) 463-5580.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §16.342.

The statutory provision affected by the proposed amendments is Texas Water Code, Chapter 17, Subchapter K, §17.921, et seq. and §17.991, et seq.

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

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

(5) Commission--Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~].

(6) - (19) (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 19, 2002.

TRD-200206129
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.502, §363.510

The amendments and new section are proposed under the authority of the Texas Water Code, §6.101 and §16.342.

The statutory provision affected by the proposed amendments and new section is Texas Water Code, Chapter 17, Subchapter K, §17.921, et seq. and §17.991, et seq.

§363.502. Definitions of Terms.

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

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

(7) Operating entity--(the individuals who compose) the governing body of a provider utility (and the individuals) who are employed by the provider utility to perform the financial, managerial, and technical tasks associated with the operation of the provider utility.

(8) [~~(7)~~] Payment rate--One minus the default rate of a service utility.

(9) [~~(8)~~] Provider utility--The entity which will provide water supply or wastewater service to the economically distressed area.

(10) [~~(9)~~] Regional capital component benchmark--The average capital component of all customers of no less than three comparable service providers.

(11) [~~(10)~~] Regional payment benchmark--The average of the payment rates of no less than three comparable service providers.

§363.510. Financial, Managerial, and Technical Training Requirements.

(a) The board may determine or request that the commission make a determination that an operating entity complete training to obtain the necessary financial, managerial, or technical capacity to ensure the project will provide adequate water or wastewater service or to maintain the financial viability of the provider utility in any of the following circumstances:

(1) upon receipt of an application from the provider utility for financial assistance under this subchapter;

(2) upon receipt of a request for amendment to the financial assistance commitment previously provided to the provider utility;

(3) upon a determination of the board that the provider utility which has received a commitment of financial assistance under this subchapter has failed to provide the board documentation required under state law, board rule, bond covenant or the grant agreement for the financial assistance provided by the board; or

(4) upon receipt of notification that the commission has determined that the provider utility has a history of compliance problems or that the commission has assessed a penalty in an enforcement action against the provider utility.

(b) The board may determine that an operating entity will be required to undertake financial, managerial, or technical training based on an assessment performed by the commission or an assessment performed by the executive administrator and approved by the board. In the event that the executive administrator prepares the assessment, the assessment as provided to the board will consist of:

(1) a summary of any documentation and information reviewed by the executive administrator relating to or developed for:

(A) an application for financial assistance from the provider utility;

(B) a request by the provider utility for an amendment to the terms or conditions of the financial assistance provided to the provider utility;

(C) compliance efforts of the provider utility with criteria and requirements identified in applicable state or federal law, board rule, bond covenants, loan agreements, or grant agreements; and

(D) any communication with the operating entity of the provider utility or its staff; and

(2) a recommendation from the executive administrator specifically identifying:

(A) any particular financial, managerial, or technical capability that the entity may lack;

(B) the basis for concluding that the entity lacks such capability by referencing the applicable state or federal law, board rule, and bond or grant agreement covenants and the action taken by the entity that suggests that training would be useful;

(C) the appropriate training course or curriculum from the approved training program and provider list; and

(D) the positions at the operating entity, whether governing body and/or employees of the operating entity, required to take the training.

(c) Upon review of an assessment by the commission or a assessment by the executive administrator recommending that training be required of an operating entity, the board will determine whether the governing body or employees of an operating entity shall be required to complete a course of training.

(1) In considering the action to be taken by the board on the assessment, the board may:

(A) decline to approve an application for financial assistance or the request for amendment to the terms or conditions of the financial assistance submitted by the provider utility based on the assessment provided to the board or for any reason identified by the board;

(B) table the action requested of the board by the operating entity based on the determination that the operating entity should complete training and that further action by the board on the request will be postponed until such time as the provider utility submits a certificate of completion of training;

(C) approve the action requested of the board by providing that the action of the board will not be implemented or performed until such time as the executive administrator is provided a certificate of completion of the required training;

(D) approve the request of the provider utility; or

(E) take such action as determined by the board.

(2) If an operating entity is required to complete training as part of the action taken by the board, the board will identify the financial, managerial, or technical capability which is to be addressed by the training and the course curriculum that the operating entity must complete.

(3) The provider utility which has an operating entity that is required to complete training as part of the action taken by the board will:

(A) select the training provider from the board approved list of training providers for required training curricula or request that the board approve an alternative curriculum or training provider by submitting to the board a proposed alternative curriculum or training provider, together with sufficient documentation for the board to evaluate the curriculum or training provider;

(B) make arrangements, including payment, with the selected training provider and assume the responsibility of insuring that the operating entity complete the training required by the board; and

(C) submit a certificate of completion from the approved training provider to the executive administrator. Upon receipt of the certificate of completion, the executive administrator shall take such actions as directed by the board in its resolution on the action requested by the provider utility.

(d) At such intervals as determined by the board, the board will consider and may approve a list of training providers that can provide any required financial, managerial, and technical training. In addition to any other information determined necessary or appropriate by the board, the list shall identify:

(1) training providers identified by name and contact information that currently provide training that is intended to improve financial, managerial, or technical capabilities of water and wastewater utilities;

(2) the course curriculum offered by the training providers;

(3) which managerial, financial, or technical capability that the training addresses; and

(4) the method by which the training provider will determine that the operating entity has satisfactorily completed the required curriculum.

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 19, 2002.

TRD-200206130
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§371.2, 371.21, 371.25, and 371.26 concerning the Drinking Water State Revolving Fund. The amendments are proposed to update a definition and to reduce the time in which applicants for funding must submit an application for assistance and receive a commitment for financial assistance.

The board proposes to amend §371.2 concerning Definition of Terms. The amendment to §371.2 will update the definition of "Commission" from the "The Texas Natural Resource Conservation Commission" to "The Texas Commission on Environmental Quality."

Amendments are proposed to §§371.21, 371.25, and 371.26 concerning the Criteria and Methods for Distribution of Funds. The amendments to §§371.21, 371.25, and 371.26 will reduce the time in which applicants for funding from the Drinking Water

State Revolving Fund (DWSRF) must submit an application for assistance and receive a commitment for financial assistance.

Under the current rules a funding line is drawn and all potential applicants above the funding line are notified of the availability of funds and are invited to submit applications. Communities with public water system projects must submit applications for assistance within four (4) months and must receive a commitment within seven (7) months from the date of invitation. If all available funds are not committed within seven (7) months after the date of invitation, all applications which have not received commitments will be returned and all potential applicants who have not submitted applications, incomplete applications or complete applications will be moved to the bottom of the priority list. The funding line will then be re-drawn and the executive administrator will again notify all potential applicants above the funding line of the availability of funds.

Applications from eligible disadvantaged communities and private applicants also must be submitted within four (4) months and must receive a commitment within seven (7) months from the date of invitation. However, the funding line is re-drawn after four (4) months from the date of invitation if all available funds are not committed.

The amendments to §§371.21, 371.25, and 375.26 will reduce the time in which all applicants must submit an application for assistance and receive a commitment. Under the proposed amendments, all applicants will now be required to submit an application within three (3) months and receive a commitment within six (6) months from the date of invitation. Thus, for public water system applicants, the funding line will now be re-drawn after six (6) months from the date of invitation if all available funds are not committed. For eligible disadvantaged communities and private applicants, the funding line is now re-drawn after three (3) months from the date of invitation if all available funds are not committed.

The initial deadlines were established at the inception of the state DWSRF program, with the intent of allowing additional time for applicants to comply with the federal requirements associated with all DWSRF applications. However, the DWSRF program is now more widely understood and accepted by potential applicants. Moreover, the amendments will allow a greater opportunity for projects on the priority list to obtain funding and facilitate a more efficient utilization of available funds.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a greater opportunity for eligible projects on the priority list to obtain funding through a more efficient allocation of available funds. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, Administration and Northern Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax @ 512/463-5580.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §371.2

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J.

§371.2. Definition of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by Chapter 15.

(1)-(12) (No change.)

(13) Commission--The Texas Commission on Environmental Quality [~~The Texas Natural Resource Conservation Commission~~].

(14)-(60) (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 19, 2002.

TRD-200206133
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.21, 371.25, 371.26

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J.

§371.21. Criteria and Methods for Distribution of Funds for Water System Improvements.

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

(e) Applicants must submit applications for assistance, as defined, within three [~~four~~] months of being invited to submit.

(f) If, after six[~~seven~~] months from the date of invitation to submit applications, all available funds are not committed, the executive administrator will return any applications which have not received

a commitment and move all projects for which no applications, incomplete applications or complete applications were submitted to the bottom of the prioritized list, where they will be placed in priority order.

(g)-(h) (No change.)

(i) Applicants must submit applications for assistance, as defined, within three [~~four~~] months of being invited to submit.

(j) If, after six[~~seven~~] months from the second date of invitation to submit applications, the remaining funds are not committed the executive administrator will return any applications which have not received a commitment. Any funds remaining that exceed the amount needed to fund complete applications will be made available for the next fiscal year.

(k) If, at any time during either six[~~seven~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the line may be moved downward in priority order to accommodate projects which would utilize the funds that would otherwise not be committed during the particular six[~~seven~~] month period. The executive administrator will notify such additional potential applicants in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given three [~~four~~] months to submit an application and six[~~seven~~] months from the date of notification to receive a loan commitment.

(l) Applications for assistance may be submitted at any time within three [~~four~~] months after notification by the executive administrator of the availability of funds and will be funded on a first come, first served basis. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

(m) (No change.)

§371.25. Criteria and Methods for Distribution of Funds for Disadvantaged Communities.

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

(c) After projects have been ranked, a disadvantaged community funding line will be drawn on the priority list according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential disadvantaged community applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within three [~~four~~] months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the disadvantaged community account after the three [~~four~~] month period has expired without affecting the priority status of the application. Applicants for funding from the disadvantaged community account will be allowed three months after submittal of an application to receive a loan commitment.

(d) Applicants for funding from the disadvantaged community account above the funding line which do not submit applications before the three [~~four~~] month deadline will be moved to the bottom of the priority list in priority order.

(e) If after three [~~four~~] months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(f) (No change.)

(g) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the disadvantaged community account of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within three [~~four~~] months of the second date of notification of the availability of funds. Applicants for funding from the disadvantaged community account will be allowed three months after submittal of an application to receive a loan commitment.

(h) If, after three [~~four~~] months of the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund completed applications will be made available for disadvantaged communities the next fiscal year.

(i) If, at any time during either six [~~seven~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding from the disadvantaged community account in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given three [~~four~~] months to submit an application. Applications for funding from the disadvantaged community account will be allowed three months after submittal of an application to receive a loan commitment.

(j) (No change.)

§371.26. Criteria and Methods for Distribution of Funds from Community/Noncommunity Water Systems Financial Assistance Account.

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

(d) After projects have been ranked, a funding line for private and NPNC projects will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential private and NPNC applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, eligible private applicants and eligible NPNC applicants above the funding line must submit applications for assistance, as defined, within three [~~four~~] months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the community/noncommunity water system financial assistance account after the three [~~four~~] month period has expired without affecting the priority status of the application. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed three months after submittal of an application to receive a loan commitment.

(e) Applicants for funding from the community/noncommunity water system financial assistance account above the funding line which do not submit applications before the three [~~four~~] month deadline will be moved to the bottom of the priority list in priority order.

(f) If after three [~~four~~] months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for community/noncommunity water systems financial assistance account or all available funds are not committed, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(g) (No change.)

(h) Projects above the funding line shall be eligible for assistance. After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the community/noncommunity water system financial assistance account of the availability of funds and will invite the submittal of applications. In order to receive funding, the eligible private applicants or eligible NPNC applicants with projects above the funding line must submit applications for assistance, as defined within three [~~four~~] months of the date of notification of the availability of funds. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed three months after submittal of an application to receive a loan commitment.

(i) If, after three [~~four~~] months from the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for community/noncommunity water systems or all available funds are not committed, the executive administrator will return any incomplete applications.

(j) If, at any time during either six [~~seven~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given three [~~four~~] months to submit an application.

(k) (No change.)

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

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

TRD-200206134
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) proposes to amend to 31 TAC §371.13 and §371.72, concerning the Drinking Water State Revolving Fund. The board proposes to amend §371.13, Projects Eligible for Assistance, and §371.72, Release of Funds. The amendments to §371.13 and §371.72 will allow public water system applicants to submit an application and receive a commitment if the applicant does not yet have the technical, managerial, and financial capacity to maintain the public water system. However, no funds will be dispersed until the applicant has obtained the technical, managerial, and financial capacity to maintain the water system.

Currently, the language in §371.13 provides that no applicant is eligible for assistance from the Drinking Water Revolving Fund until the applicant has the demonstrated the technical, managerial, and financial capacity to maintain the public water system (unless the funding is specifically utilized to obtain this capacity). Thus, an applicant may not even submit an application with the board until they have demonstrated the technical, managerial, and financial capacity to maintain the public water system. This procedure is inconsistent the language of the Safe Drinking Water Act, which only prohibits the disbursement of funds prior to evidence that an applicant has the demonstrated the technical, managerial, and financial capacity to maintain the public water system. Section 371.72 governs the prerequisites to the release of funds for an eligible project and is an appropriate location for language governing the technical, managerial, and financial capacity of an applicant. The amendments will harmonize board rules with federal law and allow more eligible public water system applicants to submit an application and receive a commitment for financial assistance, and at an earlier point in the funding process.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of this section.

Ms. Callahan has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the section will be to provide a greater opportunity for public water systems to access funding through the Drinking Water State Revolving Fund by removing a restrictive barrier to submitting an application and obtaining a commitment for financial assistance. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, Administration and Northern Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax @ 512/463-5580.

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §371.13

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J.

§371.13. Projects Eligible for Assistance.

(a) Projects are eligible for assistance if they will facilitate compliance with the primary or secondary drinking water regulations applicable to the public water system or otherwise significantly further the health protection objectives of the Act. Such projects include:

(1) capital investments to upgrade or replace infrastructure in order to continue providing the public with safe drinking water, including projects to replace aging infrastructure;

(2) projects to correct exceedances of the health standards established by the Act;

(3) projects to consolidate water supplies where the water supply is contaminated or the system is unable to maintain compliance with the national primary drinking water regulations for financial or managerial reasons and the consolidation will achieve compliance;[~~and~~]

(4) purchase of capacity in another system if the purchase is part of a consolidation plan and is cost-effective considering buy-in fees and user fees; and [~~.~~]

(5) projects in which the use of assistance will ensure that the system has the technical, managerial, and financial capacity to comply with national primary or secondary drinking water regulations over the long term, where the owner or operator of the system to be funded agrees to undertake all feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure compliance.

[~~(b) Projects proposed for public water systems for which applicants do not have the technical, managerial, and financial capacity to maintain the system are not eligible for assistance unless the use of the assistance will ensure compliance and the owner or operator of the system to be funded agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) that are necessary to ensure that the system has the technical, managerial, and financial capacity to comply with national primary or secondary drinking water regulations over the long term.~~]

(b) [~~(c)~~] Projects are not eligible to receive DWSRF funds if the primary purpose of the project is to supply or attract growth. If the primary purpose is to solve a compliance or public health problem, the entire project, including the portion necessary to accommodate a reasonable amount of growth over its useful life, is eligible.

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 19, 2002.

TRD-200206131
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

♦ ♦ ♦

SUBCHAPTER F. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §371.72

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J.

§371.72. Release of Funds.

(a) Release of Funds for Planning, Design and Permits. Prior to the release of funds for planning, design, and permits, the applicant shall submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds to complete the activity;

(2) certified copies of each contract under which revenues for repayment of the applicant's debt will accrue;

(3) executed consultant contracts relating to services provided for planning, design, and/or permits; [~~and~~]

(4) evidence that the applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with national primary or secondary drinking water regulations over the long term; and

(5) [~~(4)~~] other such instruments or documents as the board or executive administrator may require.

(b)-(f) (No change.)

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

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

TRD-200206132
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 13, 2002
For further information, please call: (512) 463-7981

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.29

The Texas Youth Commission (TYC) proposes an amendment to §85.29, concerning Program Completion and Movement of Other Than Sentenced Offenders. The amendment to the section includes procedures by which a youth could be released from a TYC institution or contract program if it is determined

he/she has derived maximum benefit from the program available. Specific criteria and procedures must be followed.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 is increased ability to discharge a youth when they have achieved their maximum potential as well as protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge a youth from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The proposed rule affects the Human Resource Code, §61.034.

§85.29. Program Completion and Movement of Other Than Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a youth has completed a program, is eligible to be moved to another program, released home, and/or placed on parole status.

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See (GAP) Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(2) This rule does not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders and §85.37 of this title (relating to Sentenced Offender Disposition).

(3) This rule does not apply to movement strictly for treatment reasons.

(c) Explanation of Terms Used.

(1) Program completion criteria -- the criteria which a youth must meet while in the current program in order to move to an equal or lesser level of restriction.

(2) Disciplinary movement -- a movement to equal or more restriction as a disciplinary consequence if found during appropriate due process. A disciplinary movement may or may not be accompanied by a new minimum length of stay requirement. There are several types of disciplinary movement consequences. These movements are subject to policies in this chapter and in Chapter 95, Subchapter A of this title (relating to Disciplinary Practices). For restriction levels see (GAP) §85.27 of this title (relating to Program Restriction Levels).

(3) Administrative transfer -- a lateral movement, i.e., a movement from one program to another program within the same restriction level for an administrative purpose. Purposes may include but are not limited to proximity to a youth's home, specific treatment needed becomes available, appropriateness of placement due to education needs, age, etc.

(4) Transition movement -- also referred to as "a transition", any movement from one assigned program site to another as a result of a youth's progress toward meeting the program completion criteria of his/her program. Transition is always to placement of equal or less restriction than that of the current placement. Transition is not a type of placement or a status.

(5) Parole status -- a status assigned to a youth when criteria have been met. The status assures that a youth, having parole status, shall not be moved into a placement of high restriction without a level I hearing.

(d) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated at specific regular intervals.

(A) If, at the review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(B) If, at the review, it is determined the youth has not completed criteria required for a transition or release movement, the youth may be continued in the placement.

(5) TYC program staff where the youth is assigned shall determine when program completion criteria have been met.

(e) Program Completion Criteria and Movement.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) Criteria. A type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no major rule violations within 90 days prior to the transition/release review; and

(ii) completion of the Minimum Length of Stay (MLS); and

(iii) completion of phase 4 resocialization goals; and

(iv) completion of Individual Case Plan (ICP) objectives;

(I) completion of required ICP objectives for transition to medium restriction except objectives which cannot be completed in the current placement but which may be completed in a medium restriction placement; or

(II) completion of all ICP objectives for release to home level restriction.

(B) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(i) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. Staff must also develop a release packet of information.

(ii) The supervising program administrator must review and approve the release packet for quality and make a recommendation regarding the release.

(iii) The Special Services Committee (SSC) must conduct an exit interview with the youth to determine whether the youth meets criteria. The committee must review and approve the release packet and recommend the release.

(iv) The superintendent/quality assurance administrator must approve and recommend the release and forward the release packet to the department of sentenced offender disposition in central office.

(v) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan.

(vi) The assistant deputy executive director for rehabilitation services will review the release packet for clinical integrity of the psychological evaluation, forensic risk assessment and release case plans.

(vii) The appropriate director of juvenile corrections will recommend approval or disapproval of the release.

(viii) The assistant deputy executive director for juvenile corrections will recommend approval or disapproval of the release.

(ix) The deputy executive director (final release authority) must approve or disapprove the release.

(x) All documentation is returned to the administrator of sentenced offender disposition who will confirm the final disposition to the facility administrator and coordinate the release process.

(2) Youth Whose Classifying Offense is Other Than Type A Violent Offender.

(A) Criteria. A youth other than a type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no major rule violations within 90 days prior to the transition/release review; and

(ii) minimum length of stay requirements:

(I) completion except three months for transition to medium restriction for youth assigned a classification MLS of less than 12 months and is low risk to fail to complete program requirements at medium restriction placement; or

(II) completion except six months for transition to medium restriction for youth assigned a classification MLS of 12 or more months and is low risk to fail to complete program requirements at medium restriction placement; or

(III) completion of the entire MLS for release to home level restriction; and

(iii) completion of phase requirements;

(I) phase 3 of resocialization goals for transition to medium restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(II) phase 4 of resocialization goals for release to home level restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(iv) completion of required ICP objectives:

(I) completion of required ICP objectives for transition to medium restriction except objectives which cannot be completed in the current placement but which may be completed in a medium restriction placement; or

(II) completion of all ICP objectives for release to home level restriction.

(B) Procedure. The transition/release of a qualified youth either to medium restriction or home level restriction on parole may occur as follows.

(i) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration.

(ii) The supervising program administrator must approve the transition/release.

(iii) The SSC [~~Special Services Committee~~] and/or treatment team must conduct an exit interview with the youth to determine whether the youth meets criteria, and must approve the transition/release.

(iv) The superintendent/quality assurance administrator (final release authority) must approve the release.

(3) Program Completion Criteria: Returned to Residential Placement. A youth returned to any residential program via a TYC level I or II hearing:

(A) with a classification MLS, must meet initial criteria for the classification; or

(B) with no classification MLS, must meet the initial criteria for the classification with one exception. Criterion for completion of the resocialization phases (specified in paragraphs (1) and (2) of this subsection) or program goals in programs not providing TYC resocialization, will apply; however, the youth shall be reassessed for degree of regression and shall begin at the phase (or goal) indicated by the reassessment.

(f) Parole Status.

(1) Parole status shall have been earned by the youth when he is deemed to have completed all program completion criteria for release to home level restriction, subsection (e)(1)(A) or (e)(2)(A) of this section depending on the classifying offense.

(2) When a youth has earned parole status and release to home restriction level placement is pending, he or she attains parole status in the current program prior to the release, unless the youth is in a high restriction program, in which case, he or she attains parole status on leaving the facility.

(g) Movement Without Program Completion.

(1) Administrative Transfer Movements. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement shall not be made in lieu of a movement for which a due process hearing is mandatory.

(2) Exceptions in Hardship Cases. Youth may be placed on parole status at home without meeting completion criteria in hardship cases on the recommendation by parole officer and approval by the deputy executive director.

(3) Exceptions to Control Population. TYC recognizes that optimum program integrity, efficiency, and safety is possible only if programs are not overpopulated. When overpopulation occurs in any institution, certain remedial actions are taken by the facility.

(A) Invoking Early Release Procedures.

(i) When population in any TYC institution reaches three percent (3%) above general population budgeted capacity (excludes youth in specialized treatment), the superintendent may declare an overpopulation condition and may invoke early release criteria.

(ii) When population in any TYC institution reaches five percent (5%) above general population budgeted capacity, the superintendent shall declare an overpopulation condition and shall invoke early release criteria.

(B) Early Release Criteria. Youth in specialized treatment programs and sentenced offenders are not eligible for early release under these procedures. Those who may be released early are general population youth who:

(i) have completed the minimum length on stay, and

(ii) have completed phase three of resocialization.

(C) Of youth who meet criteria, release should begin with those having mastered the most objectives towards completion of phase four (4).

(D) Within 24 hours of making the decision to implement the early release policy for population control on a campus, the superintendent will notify the appropriate juvenile corrections director.

(E) The deputy executive director may cancel or revise any population control in effect or may implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(4) Exceptions for Mentally Ill and Mentally Retarded Youth. Certain youth excluding sentenced offenders who have completed their minimum lengths of stay and are unable to derive further benefit from the agency's rehabilitation programs because of mental illness or mental retardation, shall be discharged following application for appropriate services to address their mental illness or mental retardation. See (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(5) Exceptions for Youth who have Derived Maximum Benefit in TYC Institutions or Secure Contract Care. The SSC or the equivalent in a secure contract care program, may recommend the release of certain youth to the central office department of juvenile corrections when it has been determined that the youth is unable to derive further benefit from the agency's rehabilitation programs in a high restriction facility and that the youth does not represent a significant risk to the community if released.

(A) Derived Maximum Benefit Criteria. All of the following criteria must be met in order for the SSC to consider whether a youth has derived maximum benefit from resocialization programming in high restriction and should be released to a less restrictive environment:

(i) Youth has never been classified as a violent offender; and

(ii) Youth is not eligible for discharge under (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth); and

(iii) Youth has no incidents of aggressive or assaultive behavior within the last 90 days resulting in a CCF-225 and Level III hearing; and

(iv) Youth has not had a Level I or Level II Hearing in the last 90 days, in which there was a finding of "true"; and

(v) Youth has a parole risk score that is low or medium; and

(vi) Youth has the appropriate behavior phase relative to MLS, specifically:

(I) Behavior phase is greater than or equal to 3 if current length of stay (LOS) is four (4) months after MLS date, or

(II) Behavior phase is greater than or equal to two (2) if current LOS is eight (8) months after MLS date, or

(III) Behavior phase is greater than or equal to one (1) if current LOS is 12 months after MLS date, and

(vii) Alternative interventions to facilitate the youth's progress have been tried without success; and

(viii) There is a suitable release plan to address the youth's risk factors in the community.

(B) Derived Maximum Benefit Procedures. Once it has been determined by the primary service worker (PSW) or appropriate staff that a youth meets the above criteria, the release may be approved or disapproved as follows:

(i) The appropriate staff completes the Derived Maximum Benefit form, CCF-521 for SSC review. This includes a proposed release plan.

(ii) If the SSC determines it is necessary, a psychological evaluation/update is completed and attached to the form. The psychological evaluation assesses youth's current level of functioning, ability to progress in current program, risk factors, and reviews the youth's transition plan, making recommendations necessary to reduce risk to the community upon transition.

(iii) The SSC reviews the youth using the CCF-521 and makes a recommendation to the appropriate administrator regarding whether the youth meets criteria for having "derived maximum benefit" and should be transitioned to a less restrictive environment. (In a secure contract care program, the facility administrator makes the recommendation to the quality assurance (QA) supervisor who reviews it and forwards it to the QA administrator following SSC review). If the SSC does not recommend release, the appropriate administrator indicates an alternative course of action on the CCF-521 and it is returned to the referring staff.

(iv) If the appropriate administrator approves the recommendation for release, the completed CCF-521 is routed to the appropriate director of juvenile corrections for approval/disapproval. If it is disapproved, the CCF-521 is returned to the referring staff.

(v) If the director of juvenile corrections approves the recommendation for release, the CCF-521 is routed to the assistant deputy executive director of juvenile corrections for final approval/disapproval. If it is disapproved, the CCF-521 is returned to the referring staff.

(vi) Once the deputy executive director reviews the CCF-521, the CCF-521 is returned to the appropriate administrator, the

appropriate action regarding the final release decision is taken by the facility. The completed CCF-521 is filed in the masterfile.

(vii) At the discretion of the executive director, a decision may be made to release a youth using the derived maximum benefit criteria during any time of this process.

(h) Notification. Parents or guardians will be notified of all movements.

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 18, 2002.

TRD-200206107
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

37 TAC §85.43

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

The Texas Youth Commission (TYC) proposes the repeal of §85.43, concerning Home Placement. The repeal of the section will eliminate the current home placement criteria to allow for a new policy.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is repealed there will be no fiscal implications for state or local government as a result of repealing the section.

Mr. McCullough also has determined that repealing the section will have no public effect as a result. There will be no effect on small businesses. There is no anticipated economic cost to persons as a result of this repeal. No private real property rights are affected by repeal of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the best treatment for youth.

The proposed repeal affects the Human Resource Code, §61.034.

§85.43. Home Placement.

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 18, 2002.

TRD-200206109
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

37 TAC §85.43

The Texas Youth Commission (TYC) proposes new §85.43, concerning Home Placement. The new section will outline new procedures by which homes are assessed for parole placement. Additional guidelines have been added to broaden the options for parole placement for youth over the age of 18.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 increased options for parole placement of youth in the community. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, § 61.075, which provides the Texas Youth Commission with the authority to permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior.

The proposed rule affects the Human Resource Code, §61.034.

§85.43. Home Placement.

(a) Purpose. The purpose of this rule is establish criteria and procedures used by Texas Youth Commission (TYC) staff to determine whether a youth in TYC jurisdiction will be allowed to return to his/her home on completion of program requirements or whether alternative living arrangements must be sought.

(b) Applicability.

(1) This policy applies to all committed youth who will be placed on parole prior to age 21.

(2) For Determinate Sentenced offenders, if the minimum period of confinement date will occur on or after the youth's 19th birthday, the parole officer is exempt from completing home assessments or updates since the youth, if released to parole, will be under the supervision of the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).

(3) Other related policies may apply such as (GAP) §87.91 of this title (relating to Family Reintegration of Sex Offenders) and (GAP) §85.45 of this title (relating to Parole of Undocumented Foreign Nationals).

(c) Explanation of Terms Used.

(1) Approved Home Placement Status -- occurs when the assessment indicates conditions that could facilitate the rehabilitative adjustment of the youth.

(2) Disapproved Home Placement Status -- occurs when the assessment indicates conditions that would impede the rehabilitative adjustment or threaten safety of the youth and/or other individuals in the home.

(3) Incomplete Home Placement Status -- the assessment process is not complete.

(4) Placement Objection -- occurs when a home assessment indicates that none of the criteria for disapproval of the home exists but:

(A) the parent provides in writing that he/she cannot or will not supervise the youth; or

(B) the parent provides in writing that the youth is not welcome in the home; or

(C) a parent refusing to accept supervision of his/her child under the age of 18, and/or a TYC youth claiming abuse in the home, will be reported to the Department of Protective and Regulatory Services (DPRS).

(5) Sexual Abuse Victim -- a person who, as the result of a sexual offense, suffers a pecuniary loss or personal injury or harm.

(6) Potential Sexual Abuse Victim -- a person who has a profile similar to that of the victim of the sexual offense, such as gender, age, etc., or who has a profile that triggers the delinquent's deviant or abusive sexual arousal patterns.

(d) Home Assessment.

(1) The assigned parole officer shall assess the home of each youth in their jurisdiction and shall determine whether the home is approved or disapproved for placement. The assigned parole officer will also determine whether the youth will be returned to his/her home upon release from residential placement. Each home assessment will be completed in the home of the youth's legal parent(s), guardian, or relative who has volunteered to have the youth placed in his/her home. The home assessment process is also applicable to all youth properly referred to parole officers through the Texas Interstate Compact on Juveniles (ICJ) Office.

(2) Within 90 days of admission to TYC, all homes shall be either approved or disapproved as a result of a completed home assessment.

(3) The home placement status may be changed but only as a result of a follow-up home assessment by the assigned parole officer.

(4) A completed home assessment shall be considered current for any youth released to his/her home within 12 months of the first day counted on the minimum length of stay. Home assessment follow-ups will be conducted annually thereafter.

(5) For Violent A offenders who have a minimum length of stay of 24 months, the follow-up home assessment is to be conducted no later than 90 days from the minimum length of stay release date, and be incorporated into the formal release plan.

(6) Any time new evidence or special circumstances warrant, a follow-up home assessment may be conducted.

(e) Home Approval/Disapproval Criteria. A youth's home shall be considered approved unless one or more of the following disapproval criteria exists, and can be documented:

(1) physical abuse;

(2) sexual abuse;

(3) physical absence of parent caretaker due to criminal incarceration or physical/ psychiatric hospitalization;

(4) serious physical/survival neglect;

(5) legal termination of parental rights for youth under 18 years of age;

(6) the youth is a sex offender and criteria/requirements in (GAP) §87.97 of this title (relating to Family Reintegration of Sex Offenders) have not been met;

(7) the youth is an undocumented foreign national and a copy of the notice from TYC to the Immigration and Naturalization Service (INS) has not been received by the parole officer as outlined in (GAP) §85.43 of this title (relating to Parole of Undocumented Foreign Nationals).

(f) Parole Placement.

(1) Approved Home - Placement Objection Exists. An approved home with objections exists when the parents/guardian refuses or is unable to accept supervision and placement in the home. The parole officer and primary service worker (PSW) will determine alternative home placements. Alternative home placements may be determined depending on whether or not the youth is over 18 years of age.

(2) Disapproved Home Placement.

(A) Youth with disapproved homes will not be returned/placed in their homes.

(B) A disapproved home may be reversed if the TYC parole staff determines specific actions have been taken to correct any deficiencies.

(C) Parents are immediately informed in writing when the home is disapproved for placement and the reasons for such. Any action that the parent may take to correct a deficiency is included.

(D) Emergency furloughs of youth with a current disapproved home may be granted if necessary.

(E) TYC parole staff will seek documented evidence of relevant problems found by another agency to determine if disapproval criteria exist.

(F) If the youth is under 18 years of age and will not be returning home, staff will seek assistance from the parent(s) in locating a relative who might be willing to have the youth placed in their home. If the home of the relative is approved, a youth may be placed in the home unless the parent(s) strongly objects to such placement in which case alternatives are sought. When a suitable relative cannot be located, an alternative program placement will be required.

(3) Alternative Home Placement for Youth Over the Age of 18 with an Approved Home with Objections or a Disapproved Home Placement.

(A) For youth over 18 years of age whose parent/guardian has refused placement, the parole officer may place the youth in an approved home location of a non-relative. If the parent/guardian has an objection to the non-relative placement, the objections will be considered in the final decision, however, placement may still occur in spite of the parental objections.

(B) An alternative home placement for youth over the age of 18 shall be considered approved unless one or more of the following criteria exist, and can be documented:

(i) there is physical absence of a dwelling;

(ii) the legal head of household is unwilling to allow youth to live in the home;

(iii) the youth is a sex offender and the victim or potential victim presently resides in the home and requirements for placement have not been met as per (GAP) §87.91 (relating to Family Reintegration of Sex Offenders);

(iv) the individuals residing in the home are on adult probation or parole and are not related to the youth;

(v) there is documented evidence that the individual(s) residing in the home have had negative and/or unsafe influence or impact on the youth.

(C) When an alternative home placement cannot be approved, the assigned parole officer shall immediately inform the residential PSW so that a second viable alternative home placement may be identified.

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 18, 2002.

TRD-200206108
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.85

The Texas Youth Commission (TYC) proposes new §87.85, concerning Sex Offender Registration. The new section will ensure compliance with code of criminal procedure regarding the registration of sex offenders committed to TYC.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 compliance with the code of criminal procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Texas Code of Criminal Procedure, §62.02, which provides the Texas Youth Commission with the authority to register certain youth as sex offenders.

The proposed rule affects the Human Resource Code, §61.034.

§87.85. Sex Offender Registration.

(a) Purpose. The purpose of this policy is to ensure compliance with Chapter 62 of the Texas Code of Criminal Procedure, regarding registration of sex offenders who are in the custody of the Texas Youth Commission (TYC).

(b) Applicability. Youth who have been convicted or adjudicated (regardless of the pendency of an appeal) for any of the following offenses are required by law to register as a sex offender unless the court excused the requirement.

(1) Indecency With a Child (§21.11 of the Texas Penal Code);

(2) Sexual Assault (§22.011);

(3) Aggravated Sexual Assault (§22.021);

(4) Prohibited Sexual Conduct (§25.02);

(5) Aggravated Kidnapping (§20.04(a)(4)), with the intent to violate or abuse the victim sexually;

(6) Burglary (§30.02(d)), with the intent to commit any of the five (5) offenses listed above;

(7) Compelling Prostitution (§43.05);

(8) Sexual Performance by a Child (§43.25);

(9) Possession of Promotion of Child Pornography (§43.26);

(10) Unlawful Restraint (§20.02), Kidnapping (§20.03), or Aggravated Kidnapping (§20.04), if the victim was younger than 17 years of age;

(11) The attempt, conspiracy, or solicitation to commit any of the offenses listed above; and

(12) Indecent Exposure (§21.08), if it is the second (or more) conviction or adjudication.

(c) Interstate Compact on Juveniles (ICJ).

(1) Youth who have been adjudicated for an offense under the laws of another State or Federal law that contain elements that are substantially similar to an offense requiring registration must register in the State of Texas.

(2) An out-of-state order excusing sex offender registration does not affect the duty of a sex offender convicted or adjudicated in another state and residing in Texas from complying with the Texas Sex Offender Registration Program.

(d) Regardless of classification any youth who is subject to sex offender registration, while committed to TYC, will receive offense specific treatment related to his/her sex offense.

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 18, 2002.

TRD-200206110
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.81

The Texas Youth Commission (TYC) proposes an amendment to §91.81, concerning Medical Consent. The amendment to the section is a minor change that states medical notifications for consent of parents will be sent via certified mail.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 better tracking of correspondence related to consent for medical treatment of youth by the parent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical treatment that is necessary.

The proposed rule affects the Human Resource Code, §61.034.

§91.81. Medical Consent.

(a) Purpose. The purpose of this rule is to establish a procedure by which TYC may exercise its authority to consent to particular medical services for youth in TYC jurisdiction in accordance with the Texas Family Code, §32.001.

(b) Texas Youth Commission (TYC) has the authority to consent to the medical, dental, psychological, and surgical treatment of its youth only when the person having the right to consent (youth's parent or guardian) has been notified and actual objection has not been received by TYC within three days of the receipt of said notice. Notification will occur during the initial admission to the TYC system and will be by certified mail to the last known address of the person having the right to consent. TYC may use its authority to give consent for youth under TYC jurisdiction who have not been assigned placement in the home or home substitute.

(c) Medical treatment of any nature for youth assigned to placement in the home or home substitute on parole status will be the responsibility of the parent or guardian.

(d) When a youth reaches age 18, he/she [~~he or she~~] has the right to legally consent to medical treatment. His/her informed consent with respect to treatment for non-life threatening conditions will prevail if there is a conflict between the youth and the parent/guardian and/or TYC.

(e) Emergency Care or Life Threatening Condition. When emergency care is needed or when the condition needing treatment is life threatening and:

(1) the youth is 18 years or older and cannot or will not give informed consent, care will be given.

(2) the youth is under 18 years old, TYC will give its consent for care when TYC has authority to consent, i.e., no objection has been received from the parent or guardian. If TYC has been given notice of objection, TYC staff will, regarding the emergency care, attempt to contact the person having authority to consent.

(3) the youth is under 18 years old and refuses treatment, care will be given.

(4) regardless of age, psychotropic medication is the required medical intervention, but the youth cannot or will not give consent and all criteria in (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies) have been met.

(f) Specific Treatment.

(1) Unless notified to the contrary TYC will administer the following specific treatment, either directly or through contract providers:

(A) physical examinations;

(B) dental examinations and treatment;

(C) treatment of injuries;

(D) mental health evaluations;

(E) immunizations;

(F) laboratory and diagnostic tests;

(G) medication for an illness or condition;

(H) chemical dependency evaluations.

(2) TYC may consent to the specific care listed above when a TYC youth under 18 years of age is committed to a facility of the Texas Department of Mental Health and Mental Retardation if the parent or guardian cannot be contacted directly for consent. The TYC medical director in central office may give such consent.

(g) Treatment Other Than Specific Treatment. Though TYC [~~it~~] has the authority to consent to treatment other than that enumerated above, TYC will defer to and attempt to contact the person having authority to consent when such medical treatment may be necessary. If a youth is under 18 years of age and a parent or guardian cannot be contacted, TYC may use its authority to consent to treatment provided the parent or guardian has not given actual notice to the contrary.

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 18, 2002.

TRD-200206111
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.29

The Texas Youth Commission (TYC) proposes an amendment to §97.29, concerning Escape, Abscondence and Apprehension. The amendment to the section will better indicate the definition

of an attempted escape so it is not to be misinterpreted as an escape.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 a clearer understanding of the definition of terms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.093, which provides the Texas Youth Commission with the authority to apprehend youth who have escaped TYC custody without a warrant or other order.

The proposed rule affects the Human Resource Code, §61.034.

§97.29. Escape,[/]Abscondence and Apprehension.

(a) Purpose. The purpose of this rule is to acknowledge a relationship with Texas Youth Commission (TYC), law enforcement, and Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TYC custody who escape or abscond from their assigned location, supervision, or who fail to report as required.

(b) Applicability. This rule applies to all youth in TYC jurisdiction whether supervised by TYC staff or contract staff.

(c) Explanation of Terms Used.

(1) Failure to report--when a youth assigned to home level restriction fails on two or more occasions to report as required by the youth's most recent case plan.

(2) Abscond--when a youth assigned to home level of restriction leaves any designated location without permission of staff and his/her whereabouts are unknown by the supervising staff.

(3) Escape--when a youth assigned to a minimum, medium, or high level restriction facility:

(A) leaves the property of a TYC facility or contract program or other designated location without permission of staff; or

(B) fails to return at the designated time unless excused by the facility/program administrator.[; or]

[(C) with specific intent to escape, commits an act amounting to more than mere preparation, but fails to effect the intended escape.]

(4) Attempted Escape--a youth with specific intent to escape, commits an act amounting to more than mere preparation, but fails to effect the intended escape.

(d) When a youth escapes or absconds, or fails to report, TYC staff will make concerted efforts to apprehend the youth with assistance of law enforcement officials, staff and other affected parties.

(e) Directives to Apprehend shall be issued by an agency staff according to TCIC/NCIC [Texas/National Crime Information Center (TCIC/NCIC)] policy and procedures and the Department of Public Safety/Federal Bureau Investigation (DPS/FBI) [DPS/FBI] guidelines.

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 18, 2002.

TRD-200206112
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

37 TAC §97.43

The Texas Youth Commission (TYC) proposes an amendment to §97.43, concerning Institution Detention Program. The amendment to the section includes secure contract care programs as being under the same guidelines for institution detention as TYC operated institutions. The amendment seeks to clarify and include secure contract care programs.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough 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 clarification of the intent of the policy for holding youth accountable. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs designed to rehabilitate youth.

The proposed rule affects the Human Resource Code, §61.034.

§97.43. Institution Detention Program.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(F) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing--the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a TYC-operated institution or secure contract program may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to [~~himself/herself or~~] others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape,[~~/~~]Abscondence and Apprehension).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances and all detention criteria must have been met as defined in (GAP) §97.41 of this title (relating to Community Detention).

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC-operated institution or secure contract program may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC-operated institution or secure contract program may be detained in a TYC-operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to the Texas Department of Criminal Justice Institution Division (TDCJ-ID) following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours, an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for:

(A) youth under indictment pending trial pursuant to (GAP) §95.5 of this title (relating to Referral to Criminal Court);

(B) youth detained pending transportation as defined in this policy; or

(C) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in (GAP) §85.37 of this title (relating to Sentenced Offender Disposition), if the hearing date is set to take place within a reasonable period of time from the date of detention.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the level IV hearing.

(f) Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

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 18, 2002.

TRD-200206113
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 424-6301

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice proposes to amend §151.4, Presentations to the Texas Board of Criminal Justice. The purpose of the amendment is to respond to a petition for a rule change by allowing for pre-registration of public presentations to the Texas Board of Criminal Justice on topics that are subject to the Board's jurisdiction but are not posted for deliberation.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the proposed rule is the increased opportunity for public discourse on issues relevant to the Texas Department of Criminal Justice.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The revisions are proposed under Texas Government Code, Sections 492.013, which grants general rulemaking authority to the Board and 492.007, which requires the Board to provide access and public comment on issues within the jurisdiction of the board, as well as Texas Government Code Chapter 551, the Open Meetings Act.

Cross Reference to Statutes: Texas Government Code, Chapter 551, and Section 492.007.

§151.4. Presentations to the Texas Board of Criminal Justice.

(a) Policy. The Texas Board of Criminal Justice is committed to provide access and opportunity for public comment on issues within the jurisdiction of the Board, and invites public testimony on items that are part of the board's posted agenda as provided for in subsection (b) of this section. The Board defines its areas of jurisdiction in Board Policy BP-01.01, available at the Board office at the address in subsection (d) of this section, or on the Internet at http://tdcj.state.tx.us/policy/policy-home.htm. Persons outside the agency who wish to have items placed on the board agenda are invited to follow the procedure in subsection (d) of this section. On an annual basis, ordinarily in the July meeting of the Board, an opportunity shall be provided for public presentations on issues that are not part of the Board's posted agenda. Annual public presentations shall be:

(1) subject to the requirements and restrictions of subsections (b), (c), (f) and (g) of this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the chairman and the general counsel; and

(3) pertinent to TDCJ policies, procedures, standards, and rules, while actual disputes that are properly the subject of the employee grievance system, the employee disciplinary system, the inmate grievance system, the inmate disciplinary system, or pending litigation shall be addressed through those processes.

(b) Registration. Persons who desire to make presentations to the Board shall complete registration cards which shall be made available at the entry to the place where the Board's scheduled meeting is to be held. Completed registration cards must be provided to the executive assistant to the chairman at least 10 minutes prior to the posted time for the beginning of the meeting, for registration the day of the meeting. Pre-registration to speak on an item on the Board's agenda, or to make a public presentation, must provide the information listed in this subsection. Pre-registration must be provided to the Board office at P.O. Box 13084, Austin Texas 78711, no earlier than the first day of the even-numbered month preceding the Board meeting for which the registration is intended (June 1 for the annual public presentation opportunity), and no later than seven days prior to the same meeting. The registration cards shall include blanks in which all of the following information must be disclosed:

(1) name of the person making a presentation;

(2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;

(3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;

(4) a reference to the agenda item, if applicable, that the person wishes to discuss before the Board;

(5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item, if applicable;

(6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(c) Presentation timing. The chairman of the Texas Board of Criminal Justice shall have discretion in setting reasonable limits on the time to be allocated for each presentation. If several persons wish to address the board on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression of support for views previously articulated by persons speaking on the same side of an issue. The chairman shall provide an opportunity for presentation by a person who has submitted a registration card prior to the board's taking action on the item that the person indicates a wish to discuss, if the presentation applies to an item on the agenda.

(d) Requests that issues be placed on an agenda. Persons outside the agency who wish to have an agenda item posted shall address their request to the Chairman, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Such requests should be submitted by the first day of the even-numbered month preceding the board meeting for which the request is intended [~~at least 50 days in advance of the board meeting~~]. The decision whether to calendar a matter for discussion before the full Board, a Board committee, a Board liaison, or with a designated staff member, shall be within the discretion of the chairman.

(e) Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the Board office in Austin. Requests should be made at least two days before a meeting. The department will make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The Board will receive public input as authorized by this section, subject to the following additional guidelines.

(1) Questioning of those making presentations will be reserved to Board members and staff recognized by the chairman.

(2) Presentations shall remain pertinent to the issue being discussed.

(3) A person who is determined by the chairman to be disrupting a meeting must immediately cease the disruptive activity or leave the meeting room if ordered to do so by the chairman.

(4) A person may not assign a portion of his or her time to another speaker.

(g) A person may not carry a prohibited weapon, an illegal knife, a club, a handgun, or a licensed concealed handgun at a meeting of the Board.

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206144
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 463-0422

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2308

The Texas Department of Human Services (DHS) proposes to amend §19.2308, concerning change of ownership, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to add the requirements for a final enhancement report to the final reporting requirements that result from a nursing facility's change of ownership.

When a Medicaid-certified nursing facility undergoes a change of ownership, DHS Facility Enrollment places two vendor holds on the prior owner for the Texas Health and Human Services Commission (HHSC): one for the nursing facility's final cost report requirements and one for its final enhancement report requirements. The proposed amendment adds the final Staffing and Compensation Report for the Enhanced Direct Care Staff Report Program to the requirements for final reporting as a result of a nursing facility's change of ownership.

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 clarification that the prior owner is required to complete the Staffing and Compensation Report for the Enhanced Direct Care Staff Report Program. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the proposal clarifies final reporting requirements that allow DHS to release vendor hold on payments to the prior owner. 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 Nancy Kimble at (512) 338- 6496 in HHSC's Rate Analysis for Long Term Care-Aged and Disabled. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-287, 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 HHSC 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.

§19.2308. Change of Ownership.

An ownership change is defined in §19.210(c) of this title (relating to Temporary Change of Ownership). For purposes of this section, prior owner is defined as the legal entity licensed to operate the facility before the change of ownership. The new owner is the legal entity licensed to operate the facility after the change. The Texas Department of Human Services (DHS) will recognize the ownership change subject to the following conditions:

(1) (No change.)

(2) When DHS receives information about a proposed or actual change of ownership, DHS may place vendor payments to the prior owner on hold until all of the following conditions are met:

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

(C) the prior owner meets the final reporting requirements as specified in Title 1, Texas Administrative Code (TAC), §355.306 (relating to Cost Finding Methodology) and 1 TAC §355.308(f)(1)(A) (relating to Enhanced Direct Care Staff Rate); and

(D) (No change.)

(3) - (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 20, 2002.

TRD-200206143
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: November 3, 2002
For further information, please call: (512) 438-3734

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 732. CONTRACTED SERVICES

SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §§732.202, 732.229, 732.247

The Texas Department of Protective and Regulatory Services (PRS) proposes amendments to §732.202 and §732.247 and proposes new §732.229, concerning how does the Department purchase goods and services, how may depreciation and use allowances be calculated, and is there a procurement protest or appeal procedure available, in its Contracted Services chapter. The purpose of the amendments and new section is to update PRS contracting rules to incorporate recent changes and additions from both the federal government and the Texas Health and Human Services Commission.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Fields also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that contractors and potential contractors with PRS will have a clear method for protesting awards of contracts carried out with alleged legal or factual errors. A further benefit will be that contractors will have more leeway to use their own accounting practices within federal guidelines in determining what is equipment. There will be no effect on large, small, or micro-businesses because the rules merely clarify procedures rather than impose new procedures, and the equipment rule grants more leeway to contractors. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Ron Curry at (512) 833-3405 in PRS's Contracted Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-230, Texas Department of Protective and Regulatory Services E-611, 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, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments and new section are proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The amendments and new section implement the Human Resources Code, §40.029.

§732.202. How does the Department purchase goods and services?

(a) The Department may purchase goods and services through competitive and noncompetitive procurement methods found in the Health and Human Services Commission purchasing rules at 1 TAC §391.101 (relating to Competitive Procurement Methods) and 1 TAC §391.103 (relating to Noncompetitive Procurements).

(b) When the Department procures subrecipient contracts or grants using competitive methods, the Department does not provide a protest procedure for awards or tentative awards, but on request the Department will provide a debriefing to an unsuccessful applicant.

§732.229. Is there a procurement protest or appeal procedure available?

(a) The Department does not provide a protest procedure for awards or tentative awards of grants or of subrecipient contracts. On request, the Department will provide a debriefing to an unsuccessful applicant.

(b) The Department provides other applicants an opportunity to request a formal or informal review of an award or tentative award under the following circumstances:

(1) The purchase award was made under a competitive procurement method and the applicant was not selected for the award;

(2) The purchase award was made under a formal provider enrollment solicitation and the applicant was not selected for an award; or

(3) The purchase or award was a sole source or emergency procurement.

(c) The protest must be limited to matters relating to the protestor's qualifications, the suitability of the goods or services offered by the protestor, or alleged irregularities in the Department's procurement process.

(d) Any applicant who is aggrieved in connection with the Department's award or tentative award of a contract as specified in subsections (a)-(c) of this section may formally protest to the director of the region or state office division that conducted the procurement (the contracting director). Protests must be in writing and received by the contracting director or procurement officer no later than 10 working days after such applicant knows, or should have known, of the occurrence of the action that is protested. Copies of the protest must be mailed or delivered by the protestor to all other parties involved if the protestor alleges that the contract should not have been awarded to such other parties.

(e) If a protest is received within the 10-day time frame as required in subsection (d) of this section and the contract has not been awarded, the contracting director will not proceed with the contract award unless a written determination is made that delaying the award would cause substantial harm to the Department.

(f) A protest must be sworn and notarized, and it must contain:

(1) a specific identification of the statutory or regulatory 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 or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue(s) to be resolved;

(5) a statement of the basis for the protest and any authority that supports the protest; and

(6) a statement that copies of the protest have been mailed or delivered to all respondents involved.

(g) If the protest is resolved by mutual agreement, then the protestor and the contracting director or designee, other than the procurement officer, shall sign an agreement acknowledging resolution of the protest.

(h) If the protest is not resolved by mutual agreement, then the contracting director shall consider all relevant information contained in the protest and issue a written determination on the protest.

(1) If the contracting director determines that no violation of rules or statutes has occurred, the director shall so inform the protestor and all respondents involved by letter, which sets forth the reasons for the determination and of the appeal process requirements.

(2) If the contract director determines that a violation of the rules or statutes has occurred, the director shall so inform the protestor and all respondents involved by letter, which sets forth the reasons for the determination (including the provisions that were violated) and the corrective action that will be taken. If a contract has been awarded, the corrective action may include voiding the contract.

(i) The contracting director's determination on a protest may be appealed by the protestor, or by a respondent, to the director's supervisor. The appeal must be in writing and received by the contracting director or supervisor no later than 10 working days after the date of the director's determination. The appeal is limited to review of the director's determination. Copies of the appeal must be mailed or delivered by the appellant to all respondents involved and must contain a statement that such copies have been provided.

(j) The supervisor or designee, other than the contracting director, shall review the director's determination and issue a written determination on the appeal. The supervisor's written determination is final and shall be sent to the appellant, all respondents involved, and the director.

(k) A protestor's or appellant's failure to meet the requirements of this section invalidates the protest or appeal.

§732.247. How may depreciation and use allowances be calculated?[~~Depreciation and Use Allowances.~~]

(a)-(i) (No change.)

(j) Effective with the [~~their~~] corporate fiscal year ending in 2001 [~~1997~~], a residential child care contractor must [~~contractors are required to~~] depreciate purchases made during its [~~their~~] corporate fiscal year 2002 [~~years ending in 1998~~] and thereafter of any single asset having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of:

(1) the capitalization level established by the organization for the financial statement purposes; or

(2) $5,000 [~~valued at $1,000 or more and with an estimated useful life of more than one year at the time of purchase~~].

(k) (No change.)

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206152
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: November 22, 2002
For further information, please call: (512) 438-3437

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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Railroad Commission of Texas has been automatically withdrawn. The amended section as proposed appeared in the March 22, 2002 issue of the *Texas Register* (27 TexReg 2160).

Filed with the Office of the Secretary of State on September 25, 2002.

TRD-200206257

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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §§351.17, 351.19, 351.21, 351.23

The Health and Human Services Commission (HHSC) adopts the additions to Chapter 351, Coordinated Planning and Delivery of Health and Human Services, §351.17, Right to Correct Incorrect Personal Information; §351.19, Requesting a Correction of Personal Information; § 351.21, Where to Send a Request for Correction of Personal Information; and §351.23, Review of Requests for Correction of Personal Information without changes as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1965).

The adopted sections establish procedures by which individuals may request correction of information collected about an individual ("personal information") by the HHSC and the process the HHSC will use to review such requests.

The 77th Texas Legislature enacted House Bill 1922, which added Chapter 559, "State Government Privacy Policies," to the Texas Government Code. This provision requires the HHSC to establish reasonable procedures by which an individual may request the correction of personal information collected by the HHSC. The purpose of the proposed amendments to Chapter 351 is to inform the public about the right to correct incorrect personal information and to adopt such procedures.

No comments were received on the new sections as proposed.

These rules are adopted under authority granted to the HHSC by section 531.033, Government Code, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to implement the Health and Human Services Commission's duties, and under section 62.051(d), Health and Safety Code, which directs the HHSC to adopt rules as necessary to implement the Children's Health Insurance Program. No other statutes, articles, or codes are affected by the proposed rules. Chapter 351. Coordinated Planning And Delivery Of Health And Human Services

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

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

TRD-200206039
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 6, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 424-6576

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR THE INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR) PROGRAM

1 TAC §355.451

The Health and Human Services Commission (HHSC) adopts amendments to §355.451, governing definitions and general reimbursement information, without changes to the proposed text as published for public review and comment in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3869). The text of the rule will not be republished.

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. The amendments describe how rates for service coordination for individuals served through the MRLA program will be established and how the service will be defined and limited.

Explanation

Section 355.451(a) is amended to state that cost data is required annually.

Public Comment

A hearing to accept oral and written testimony from members of the public concerning the proposal was held on June 3, 2002. No testimony was offered. No written comments were received.

Statutory Authority

The amendments are adopted under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates

for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carryout the duties of HHSC under Chapter 531, Government Code.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206176
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 13, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-6756

SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §§355.701, 355.743 - 355.746

The Health and Human Services Commission (HHSC) adopts amendments to §355.701, concerning definitions and general specifications and §355.743, concerning reimbursement methodology for service coordination and new §355.744, concerning service coordination definitions for mental retardation local authority (MRLA) program, §355.745, concerning service limitations for service coordination through MRLA, and §355.746, concerning reimbursement methodology for MRLA service coordination, without changes to the proposed text as published for public review and comment in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3871). The text of the rules will not be republished.

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. The amendments and new rules describe how rates for service coordination for individuals served through the MRLA Program will be established and how the service will be defined and limited.

Explanation

Section §355.701(a) is amended to state that cost data is required to be submitted annually. The amendment to §355.743(a) corrects a reference, and the amendment to §355.743(e)(1) removes a reference to an extraneous date.

New §§355.744 - 355.746 maximize the state's opportunity to draw federal funds to cover allowable costs in community settings. The new rules will create another service coordination rate for those individuals with Mental Retardation being served through the MRLA program. Currently, the state sets a single rate for service coordination provided to all individuals with mental retardation. The rules will result in one rate for persons being served through the MRLA program and another rate for all other individuals with mental retardation.

Public Comment

A hearing to accept oral and written testimony from members of the public concerning the proposal was held on June 3, 2002. No testimony was offered. No written comments were received.

Statutory Authority

The amendments and new rules are adopted under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206177
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 13, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-6756

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID HOME HEALTH PROGRAM

1 TAC §355.8021

The Health and Human Services Commission (HHSC) adopts an amendment to §355.8021 with changes to the proposed text published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4250). The text of the rule will be republished.

The justification for the amendment is to replace the current reasonable cost principles reimbursement methodology with a fee schedule developed by HHSC and updated every four years for the various therapy, nursing and aide services provided under the Texas Medicaid Home Health program. The initial fee schedule is based upon an analysis of current payments with input from home health providers and is intended to be budget neutral.

During the comment period, comments were received from the Texas Association for Home Care, a hospital representative, and an individual. The following is a summary of comments received and the commission's response to each comment.

Comment: The rule should be reformatted into (A) and (B) only to make it read a bit clearer.

Response: The commission disagrees with this comment as it believes that the current format is clear.

Comment: The commission should publish the initial fee schedule as part of the preamble.

Response: The commission agrees. The initial fee schedule is as follows:

Skilled Nursing Visit--$100.94

Physical Therapy Visit--$116.36

Occupational Therapy Visit--$118.62

Speech Language Pathology Visit--$119.61

Aide Visit--$47.03

Comment: The recommendations for the initial fee schedule described in the adopted rule were developed, in part, by a workgroup consisting of commission staff and industry and association representatives that oversaw the transition from a previously cost-based reimbursement system to a prospective fee schedule.

The analysis to create the initial fee schedule was based upon an averaging of Medicaid payments to selected high-volume providers, which were based upon the Medicare definition of reasonable cost as it existed prior to October 1, 2000.

Because of a recent change to Medicare cost criteria, Medicare cost reports will not be available in the future. To ensure adequate flexibility in the fee-setting process, the state should have the latitude to look at the current market for these services as well as costs as the basis for payment. To accomplish this, the commission should consider the following changes:

(1) Delete the phrase "and each fee schedule developed under this paragraph" from subsection (a)(2)(B). This paragraph relates only to the development of the Weighted Average Rate for the initial fee schedule.

(2) Change subsection (a)(2)(B)(i) to provide that a 'high volume' Medicaid provider is a provider that is identified within at least the top 45% of recipients of Medicaid payments for the covered services.

(3) Change the phrase "for the most recent twelve months of available data" in subsection (a)(2)(B)(i) to "for the most recent six months of available data." The analysis was performed on 6 months of data available at the time of the workshops and there was consensus that this was an adequate period.

(4) Change the word "rebasing" in subsection (a)(2)(C) to "HHSC will conduct an analysis."

Response: The commission agrees with the commenter's suggestions and has made the suggested changes.

Comment: The commission should change the definition of "high volume provider" in (a)(2)(A)(i) to "For purposes of this paragraph, a "high-volume" Medicaid provider is a provider that is identified in at least the top 45% of Medicaid payments for these services for the most recent six months of available data."

Response: The commission agrees, as the data used in developing the initial fee schedule was based upon providers identified in the top 45% of Medicaid payees for such services. During the comment period, the Texas Association for Home Care requested a review of the payments to the sampled providers, and this review demonstrated that the high-volume Medicaid providers were in the top 45% of recipients of Medicaid payments for those services and time period.

In addition, the commission has revised the text in subsection (a)(2)(C) to clarify the data that will be used in future analyses.

The amendment is adopted to be effective November 1, 2002, under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements. The amendment implements the Government Code, §531.033 and §531.021(b).

§355.8021. Reimbursement Methodology for Home Health Services.

(a) Reimbursement methodology for services provided by a home health agency.

(1) Except for expendable medical supplies and DME, authorized home health services provided for eligible Medicaid recipients are reimbursed the lesser of:

(A) the amount billed to Medicaid by the agency; or

(B) the fee established for the specific authorized home health service and published as part of a fee schedule developed by the commission in accordance with paragraph (2) of this subsection.

(2) HHSC will establish a fee schedule for Medicaid-reimbursable therapy, nursing, and aide services provided by a home health agency in accordance with this paragraph.

(A) HHSC bases the initial fee schedule upon an analysis of providers' Medicaid payments for providing Medicaid-reimbursable therapy, nursing, and aide services.

(B) HHSC calculates a Weighted Average Rate (WAR) for the initial fee schedule developed under this paragraph.

(i) The WAR is based on a representative sampling of Medicaid payments to "high-volume" Medicaid providers for therapy, nursing, and aide services that are eligible for reimbursement by Medicaid. For purposes of this paragraph, a "high-volume" Medicaid provider is a provider that is identified in the top 45% of recipients of Medicaid payments for these services for the most recent six months of available data.

(ii) HHSC averages the sampled Medicaid payments received by all high-volume providers for a specified home health service. HHSC weights the average Medicaid payment by the total number of services reimbursed by Medicaid in this sample. HHSC applies the weighted average rate to the fee schedule.

(C) Following development of the initial fee schedule, HHSC will conduct an analysis no later than December 31, 2004. HHSC will conduct an analysis that will include, but not be limited to, payments for as well as the costs associated with providing these Medicaid-reimbursable therapy, nursing, and aide services at least every four (4) years thereafter. HHSC will seek input from contracted home health services providers and other interested parties in performing this analysis.

(b) Reimbursement methodology for expendable medical supplies provided by enrolled home health agencies and DME providers/suppliers. Participating providers are reimbursed the maximum allowable fee for expendable medical supplies established

by the department. The maximum allowable fee is based upon the lesser of the following:

(1) the billed amount;

(2) the Medicare fee schedule in place prior to October 1, 2000, as defined in 25 TAC §29.301 (relating to General); or

(3) the expendable medical supply acquisition fee as defined in 25 TAC §29.301.

(c) Reimbursement methodology for durable medical equipment provided by enrolled home health agencies and DME providers/suppliers. Participating providers are reimbursed the maximum allowable fee for durable medical equipment established by the department. The maximum allowable fee for durable medical equipment is based on the lesser of the following:

(1) the billed amount;

(2) the durable medical equipment acquisition fee, which is based upon the manufacturer's suggested retail price minus a discount;.

(A) the manufacturer's suggested retail price is the listed price that the manufacturer recommends as the retail selling price;

(B) the discount from the manufacturer's suggested retail price is determined from the total discount that vendors receive from manufacturers. The initial value of the discount shall be 18%. Thereafter, the department is responsible for periodically conducting a representative sample by which a discount is determined. Participating providers must, at the department's written request, provide necessary information needed to determine the discount. The department shall review the discount at least every five years.

(3) the Medicare fee schedule as defined in 25 TAC §29.301; or

(4) if no discount is provided, the incurred cost to the dealer plus a percentage to be determined by the department.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206178
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 1, 2002
Proposal publication date: May 17, 2002
For further information, please call: (512) 424-6756

DIVISION 6. RURAL HEALTH CLINICS

1 TAC §355.8101

The Health and Human Services Commission (HHSC) adopts the amendment to §355.8101, without changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3874). The text of the rule will not be republished.

The amendment incorporates federally-mandated changes to the reimbursement methodology for rural health clinics. The amendment also explains how reimbursement rates will be calculated. The reimbursement methodology is either a prospective payment system (PPS) or an alternative payment system. The per visit rates for both payment systems will be derived from a facility's reasonable costs for a specified period of time.

The Commission received no comments regarding adoption of the amendment.

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

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 23, 2002.

TRD-200206179
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 13, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-6756

DIVISION 14. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

1 TAC §355.8261

The Health and Human Services Commission (HHSC or Commission) adopts the amendment to §355.8261, with changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3879). The text of the rule will be republished.

The amendment incorporates federally-mandated changes to the reimbursement methodology for federally qualified health centers (FQHC). The amendment also explains how reimbursement rates will be calculated. The reimbursement methodology is either a prospective payment system (PPS) or an alternative payment system. The per visit rates for both payment systems will be derived from a facility's reasonable costs for a specified period of time.

The Commission received a written comment from the Texas Association of Community Health Centers, Inc. The comment and the Commission's response follows.

Comment: The commenter requested the addition of podiatrists to the list of practitioners in the definitions of "visit" and "medical visit."

Response: HHSC disagrees with this comment as it would result in Medicaid reimbursement of visits provided by podiatrists,

which is beyond the scope of the current proposal. No change was made.

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

§355.8261. Reimbursement.

(a) Prospective Payment Methodology. Federally qualified health centers (FQHCs) employing the Prospective Payment System (PPS) methodology, in accordance with section 1902(aa) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000 (42 U.S.C. §1396a(aa)), effective for the FQHC's fiscal year that includes dates of service occurring January 1, 2001, and after, will be reimbursed a PPS per visit rate for Medicaid covered services. There will no longer be a cost settlement for FQHCs for dates of service on or after January 1, 2001

(1) The PPS per visit rate for each FQHC will be calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years. The PPS per visit rates will be calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods.

(2) Prior to the Health and Human Services Commission's (HHSC) setting a PPS rate pursuant to this subsection, each FQHC will be reimbursed on the basis of an interim per visit rate. The interim per visit rate for each FQHC will be the encounter rate from the latest finalized cost report settlement, adjusted as provided for in paragraph (7) of this subsection. When HHSC has determined a final PPS rate, interim payments will be reconciled back to January 1, 2001. The final PPS rate, as adjusted, will apply prospectively from the date of the final approval.

(3) Reasonable costs, as used in setting the base rate, the PPS rate, or any subsequent effective rate, is defined as those costs that are allowable under Medicare Cost Principles, as outlined in 42 C.F.R. part 413, with no productivity screens and no per visit payment limit. The administrative cost limit of thirty percent (30%) of total costs that was in place on December 31, 2000, will be retained in determining reasonable costs. Reasonable costs do not include unallowable costs.

(4) Unallowable costs. Unallowable costs are expenses that are incurred by an FQHC and that are not directly or indirectly related to the provision of covered services, according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating a rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(B) personal expenses not directly related to the provision of covered services;

(C) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(D) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(E) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(F) political contributions;

(G) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(H) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(I) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services, except as permitted in 42 C.F.R. part 413;

(J) dues to all types of political and social organizations and to professional associations whose functions and purpose are not reasonably related to the development and operation of patient care facilities and programs or the rendering of patient care services;

(K) entertainment expenses, except those incurred for entertainment provided to the staff of the FQHC as an employee benefit. An example of entertainment expenses is lunch during the provision of continuing medical education on-site;

(L) board of director's fees, including travel costs and meals provided for directors;

(M) fines and penalties for violations of statutes, regulations, and ordinances of all types;

(N) fund raising and promotional expenses, except as noted in subparagraph (D) of this paragraph;

(O) interest expenses on loans pertaining to unallowable items, such as investments. Also the interest expense on that portion of interest paid that is reduced or offset by interest income;

(P) insurance premiums pertaining to items of unallowable cost;

(Q) any accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount;

(R) mileage expense exceeding the current reimbursement rate set by the federal government for its employee travel;

(S) cost for goods or services that are purchased from a related party and that exceed the original cost to the related party;

(T) out-of-state travel expenses not related to the provision of covered services, except out-of-state travel expenses for training

courses that increase the quality of medical care and/or the operating efficiency of the FQHC;

(U) over-funding contributions to self-insurance funds that do not represent payments based on current liabilities;

(V) overhead costs beyond the thirty percent (30%) limitation established by the HHSC.

(5) A visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, nurse-midwife, visiting nurse, a qualified clinical psychologist, clinical social worker, other health professional for mental health services, dentist, dental hygienist, or an optometrist. Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except where one of the following conditions exist:

(A) after the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or

(B) the FQHC patient has a medical visit and an "other" health visit.

(6) A medical visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, nurse mid-wife, or visiting nurse. An "other" health visit includes, but is not limited to, a face-to-face encounter between an FQHC patient and a qualified clinical psychologist, clinical social worker, other health professional for mental health services, a dentist, a dental hygienist, an optometrist, or a Texas Health Steps Medical Screen.

(7) Effective for each FQHC's fiscal year that includes dates of services occurring on or after October 1, 2001, subsequent increases in an FQHC's base per visit rate or the effective rate shall be the rate of change in the Medicare Economic Index (MEI) for primary care.

(8) The effective rate is the rate paid to the FQHC for the current fiscal year. The effective rate equals the base rate plus the MEI for each of the FQHC's fiscal years since the setting of its base rate. The effective rate shall be calculated at the start of each FQHC's fiscal year and shall be applied prospectively for that fiscal year.

(9) An adjustment shall be made to the effective rate if the FQHC can show that the increase is due to a change in scope. An FQHC or the commission may request an adjustment of the effective rate equal to one hundred percent (100%) of reasonable costs by filing a cost report and the necessary documentation to support a claim that the FQHC has undergone a change in scope. A cost report, filed to request an adjustment in the effective rate, may be filed at any time during an FQHC's fiscal year but no later than five (5) calendar months after the end of the FQHC's fiscal year. All requests for adjustment in the FQHC's effective rate must include at least 6 months of financial data. Any effective rate adjustment granted as a result of such a filing must be completed within sixty (60) days of receipt of a workable cost report and documentation supporting the FQHC's claim that it has undergone a change in scope. Within sixty (60) days of submitting a workable cost report, HHSC or its designee shall make a determination regarding a new effective rate. The new effective rate shall become effective the first day of the month immediately following its determination. All adjustments shall be calculated using the effective rate and shall be applied prospectively.

(10) Any request to adjust an effective rate must be accompanied by documentation showing that the FQHC has had a change in scope. A change in scope of services provided by an FQHC includes the addition or deletion of a service or a change in the magnitude, intensity or character of services currently offered by an FQHC or one of the FQHC's sites. A change in scope includes:

(A) an increase in service intensity attributable to changes in the types of patients served including, but not limited to, HIV/AIDS, the homeless, elderly, migrant, and other chronic diseases or special populations;

(B) any changes in services or provider mix provided by an FQHC or one of its sites;

(C) changes in operating costs that have occurred during the fiscal year and which are attributable to capital expenditures, including new service facilities or regulatory compliance;

(D) changes in operating costs attributable to changes in technology or medical practices at the FQHC;

(E) indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents; or

(F) any changes in scope approved by the Health Resources and Service Administration (HRSA).

(11) A workable cost report includes the following:

(A) an FQHC Statistical Data Coversheet with Certification by an Officer or Administrator;

(B) Medicaid Cost Report consisting of three (3) worksheets:

(i) Worksheet 1--Reclassification and Adjustment of Trial Balance of Expenses;

(ii) Worksheet 2--Provider Staff and Encounters; and

(iii) Worksheet 3--Computation of Allowable Cost and Cost Settlement;

(D) Trial Balance with account titles. If the provider's Trial Balance has only account numbers, a Chart of Accounts will need to accompany the Trial Balance;

(E) a Mapping of the Trial Balance that shows the tracing of each Trial Balance account to a line and column on worksheet 1 of the Cost Report;

(F) documentation supporting the provider's reclassification and adjustments;

(G) a Schedule of Depreciation of depreciable assets;

(H) listing of all satellites, if applicable; and

(I) Federal Grant Award notices or changes in scope approved by HRSA.

(12) Once the base rate for an FQHC has been calculated, the FQHC will be paid its effective rate without the need to file a cost report. Except as specified in paragraph (13) of this subsection, a cost report will be required only if the FQHC is seeking to adjust its effective rate.

(13) New FQHCs must file a projected cost report within 90 days of their designation as an FQHC to establish an initial payment rate. The cost report will contain the FQHC's reasonable costs anticipated to be incurred during the FQHC's initial fiscal year. FQHC must file a cost report within five (5) months of the end of FQHC's initial fiscal year. The cost settlement must be completed within eleven (11) months of receipt of a cost report. The cost per visit rate established

by the cost settlement process shall be the base rate. Any subsequent increases shall be calculated as provided herein. A new FQHC location established by an existing FQHC participating in the Medicaid program will receive the same effective rate as the FQHC establishing the new location. An FQHC establishing a new location may request an adjustment to its effective rate as provided herein if its costs have increased as a result of establishing a new location.

(14) In the event that the total amount paid to an FQHC by a managed care organization is less than the amount the FQHC would receive under PPS, the state will reimburse the difference on a quarterly basis. The state's quarterly supplemental payment obligation will be determined by subtracting the baseline payment under the contract for services being provided from the effective rate without regard to the effects of financial incentives that are linked to utilization outcomes, reductions in patient cost, or bonuses.

(15) Submission of Audited Medicare Cost Reports. An FQHC must submit a copy of its audited Medicare cost report to the state within 15 days of receipt.

(b) Alternative Payment Methodology. Federally qualified health centers (FQHCs) employing the alternative to the Prospective Payment System (PPS) methodology, in accordance with section 1902(aa) of the Social Security Act, as amended by the Benefits Improvement and Protection Act (BIPA) of 2000(42 U.S.C. §1396a(aa)), effective for the FQHC fiscal year that includes dates of service occurring January 1, 2001, and after, will be reimbursed a per visit rate for Medicaid covered services with cost settlement at the greater of one hundred percent (100%) of reasonable costs or the allowable per visit rate, as determined under the prospective payment system. Cost settlements will be determined from provider submitted cost reports.

(1) Written and signed agreements will be obtained from all FQHC providers agreeing to the alternative methodology.

(2) The alternative PPS per visit rate for each FQHC will be calculated based on one hundred percent (100%) of the average of the FQHC's reasonable costs for providing Medicaid covered services as determined from audited cost reports for the FQHC's 1999 and 2000 fiscal years.

(3) The alternative PPS per visit rates will be calculated by adding the total audited reimbursable costs as determined from the 1999 and 2000 cost reports and dividing by the total audited visits for these same two periods.

(4) Prior to HHSC's setting a final base rate pursuant to the alternative PPS methodology outlined in this subsection, each FQHC shall be reimbursed on the basis of an interim per visit rate. The interim per visit rate for each FQHC will be the encounter rate from the latest finalized cost report settlement, as adjusted pursuant to paragraph (9) of this subsection of the alternative PPS methodology. When HHSC has determined a final alternative PPS rate, interim payments will be reconciled back to January 1, 2001. If the total payments under the interim rates are less than the total amount calculated pursuant to this subsection, an adjustment will be made to account for the difference. If the interim payments are greater than the base rate calculation, no reconciliation will occur. The final base rate, as adjusted, will apply prospectively from the date of final approval.

(5) Reasonable costs, as used in setting the base rate, the alternative PPS rate, or any subsequent effective rate, is defined as those costs that are allowable under Medicare Cost Principles as outlined in 42 C.F.R. part 413 with no productivity screens and no per visit payment limit. The administrative cost limit of thirty percent (30%) of total costs that was in place on December 31, 2000, shall be maintained in determining reasonable costs. Reasonable costs shall not include unallowable costs.

(6) Unallowable costs are expenses that are incurred by an FQHC and that are not directly or indirectly related to the provision of covered services according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating a rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(B) personal expenses not directly related to the provision of covered services;

(C) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(D) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(E) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(F) political contributions;

(G) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(H) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(I) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services, except as permitted in 42 C.F.R. part 413;

(J) dues to all types of political and social organizations and to professional associations whose functions and purpose are not reasonably related to the development and operation of patient care facilities and programs, or the rendering of patient care services;

(K) entertainment expenses except those incurred for entertainment provided to the staff of the FQHC as an employee benefit. An example of entertainment expenses is lunch during the provision of continuing medical education on-site;

(L) board of director's fees including travel costs and meals provided for directors;

(M) fines and penalties for violations of statutes, regulations, and ordinances of all types;

(N) fund raising and promotional expenses, except as noted in subparagraph (D) of this paragraph;

(O) interest expenses on loans pertaining to unallowable items, such as investments. Also, the interest expense on that portion of interest paid that is reduced or offset by interest income;

(P) insurance premiums pertaining to items of unallowable cost;

(Q) any accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount;

(R) mileage expense exceeding the current reimbursement rate set by the federal government for its employee travel;

(S) cost for goods or services that are purchased from a related party and that exceed the original cost to the related party;

(T) out-of-state travel expenses not related to the provision of covered services, except out-of-state travel expenses for training courses that increase the quality of medical care and/or the operating efficiency of the FQHC;

(U) over-funding contributions to self-insurance funds that do not represent payments based on current liabilities;

(V) overhead costs beyond the thirty percent (30%) limitation established by HHSC.

(7) A visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, nurse-midwife, visiting nurse, clinical psychologist, clinical social worker, other health professional for mental health services, dentist, dental hygienist or an optometrist. Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except where one of the following conditions exists:

(A) after the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or

(B) the FQHC patient has a medical visit and an "other" health visit.

(8) A medical visit is a face-to-face encounter between an FQHC patient and a physician, physician assistant, nurse practitioner, nurse mid-wife, or visiting nurse. An "other" health visit includes, but is not limited to, a face-to-face encounter between an FQHC patient and a clinical psychologist, clinical social worker, other health professional for mental health services, a dentist, a dental hygienist, an optometrist, or a Texas Health Steps Medical Screen.

(9) Effective for each FQHC's fiscal year that includes dates of services occurring on or after October 1, 2001, subsequent increases in an FQHC's base per visit rate or the effective rate shall be the rate of change in the Medical Economic Index (MEI) for primary care plus one and one-half percent (1.5%). If the increase in an FQHC's reasonable costs is greater than the MEI plus one and one-half percent for any fiscal year, an FQHC may request an adjustment of its effective rate equal to one hundred percent (100%) of reasonable costs.

(10) The effective rate is the rate paid to the FQHC for the current fiscal year. The effective rate equals the base rate plus the MEI plus one and one-half percent (1.5%) for each of the FQHC's fiscal years since the setting of its base rate. The effective rate shall be calculated at the start of each FQHC's fiscal year and shall be applied prospectively for that fiscal year.

(11) An adjustment will be made to the effective rate if the increase in an FQHC's reasonable costs are greater than the MEI plus one and one-half percent (1.5%) for any fiscal year in which the FQHC can show that it is operating in an efficient manner or that the increase is due to a change in scope. An FQHC or HHSC may request an adjustment of its effective rate equal to one hundred percent (100%) of reasonable costs by filing a cost report and the necessary documentation to support a claim that it is operating in an efficient manner or has undergone a change in scope. A cost report, filed to request an adjustment in the effective rate, may be filed at any time during an FQHC's fiscal year but no later than five (5) calendar months after the end of the FQHC's fiscal year. All requests for adjustment in the FQHC's effective rate must include at least 6 months of financial data. Any effective rate adjustment granted as a result of such a filing must be completed within sixty (60) days of receipt of a workable cost report and documentation supporting the FQHC's claim that it is operating in an efficient manner or has undergone a change in scope. Within sixty (60) days of submitting a workable cost report, HHSC or its designee shall make a determination regarding a new effective rate. The new effective rate shall become effective the first day of the month immediately following its determination. All subsequent increases shall be calculated using the adjusted effective rate.

(12) Any request by an FQHC to adjust its effective rate must be accompanied by documentation showing that the FQHC is operating in an efficient manner or that it has had a change in scope.

(13) Operating in an efficient manner shall include a showing that: the FQHC has implemented an outcome-based delivery system that includes prevention and chronic disease management. Prevention includes, but is not be limited to, programs such as immunization and medical screens. Disease Management must include, but not be limited to, programs such as those for diabetes, cardiovascular conditions, and asthma that can demonstrate an overall improvement in patient outcomes; and

(A) paying employee's salaries that do not exceed the rates of payment for similar positions in the area, taking into account experience and training as determined by the Texas Workforce Commission;

(B) providing fringe benefits to its employees that do not exceed 12% of the FQHC's total costs;

(C) implementing cost saving measures for its pharmacy and medical supplies expenditures by engaging in group purchasing; and

(D) employing the Medicare concept of a "prudent buyer" in purchasing its contracted medical services.

(14) A change in scope of services provided by an FQHC includes the addition or deletion of a service or a change in the magnitude, intensity or character of services currently offered by an FQHC or one of the FQHC's sites. A change in scope includes:

(A) an increase in service intensity attributable to changes in the types of patients served, including but not limited to, HIV/AIDS, the homeless, elderly, migrant, other chronic diseases or special populations;

(B) any changes in services or provider mix provided by an FQHC or one of its sites;

(C) changes in operating costs that have occurred during the fiscal year and that are attributable to capital expenditures, including new service facilities or regulatory compliance;

(D) changes in operating costs attributable to changes in technology or medical practices at the FQHC;

(E) indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents;

(F) any changes in scope approved by the Health Resources and Service Administration (HRSA).

(15) A workable cost report includes the following:

(A) an FQHC Statistical Data Coversheet with Certification by an Officer or Administrator;

(B) Medicaid Cost Report consisting of three (3) worksheets:

(i) Worksheet 1--Reclassification and Adjustment of Trial Balance of Expenses;

(ii) Worksheet 2--Provider Staff and Encounters; and

(iii) Worksheet 3--Computation of Allowable Cost and Cost Settlement;

(C) Trial Balance with account titles. If the provider's Trial Balance has only account numbers, a Chart of Accounts will need to accompany the Trial Balance;

(D) a Mapping of the Trial Balance that shows the tracing of each Trial Balance account to a line and column on worksheet 1 of the Cost Report;

(E) documentation supporting the provider's reclassification and adjustments;

(F) a Schedule of Depreciation of depreciable assets;

(G) listing of all satellites, if applicable; and

(H) Federal Grant Award notices or changes in scope approved by HRSA.

(16) Once the base rate for an FQHC has been calculated, the FQHC will be paid its effective rate without the need to file a cost report. Except as specified in paragraph (17) of this subsection, a cost report will be required only if the FQHC is seeking to adjust its effective rate.

(17) New FQHCs must file a projected cost report within 90 days of their designation as a FQHC to establish an initial payment rate. The cost report will contain the FQHC's reasonable costs anticipated to be incurred during the FQHC's initial fiscal year. FQHC must file a cost report within five (5) months of the end of FQHC's initial fiscal year. The cost settlement must be completed within eleven (11) months of receipt of a cost report. The cost per visit rate established by the cost settlement process will be the base rate. Any subsequent increases will be calculated as provided herein. A new FQHC location established by an existing FQHC participating in the Medicaid program will receive the same effective rate as the FQHC establishing the new location. An FQHC establishing a new location may request an adjustment to its effective rate as provided herein if its costs have increased as a result of establishing a new location.

(18) In the event that the total amount paid to an FQHC by a managed care organization is less than the amount the FQHC would receive under section 1902(aa)(1-4) of the Social Security Act, as applicable, the state will reimburse the difference on a quarterly basis. The state's quarterly supplemental payment obligation will be determined by subtracting the baseline payment under the contract for services being provided from the effective rate without regard to the effects of financial incentives that are linked to utilization outcomes, reductions in patient cost, or bonuses.

(19) It is the intent of the state to assure that centers are reimbursed at one hundred percent (100%) of their reasonable costs or the adjusted alternative PPS rate, whichever is greater. If the state can show that an FQHC is being reimbursed at an effective rate that exceeds one hundred and two percent (102%) of its reasonable costs, it may reduce the FQHC's effective rate to a rate that reflects one hundred percent (100%) of its reasonable costs or the alternative PPS rate without adjustments, whichever is greater. Any such adjustment in an FQHC's effective rate may only be applied prospectively. The state may request that an FQHC file a cost report for its most current fiscal year, plus any revisions to the cost report, within five (5) months of notification, when evidence indicates that an FQHC is receiving excess reimbursement. The adjusted alternative PPS rate means the base rate plus subsequent increases as defined herein, excluding any adjustment in the effective rate. The new effective rate will become effective the first day of the month immediately following its determination. All subsequent increases will be calculated using the adjusted effective rate. Payments made under this alternative methodology will at least be equal to what would have been paid under PPS.

(20) Submission of Audited Medicare Cost Reports. An FQHC shall submit a copy of its audited Medicare cost report to the state within 15 days of receipt.

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 23, 2002.

TRD-200206180
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 13, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-6756

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.2

The Texas Department of Housing and Community Affairs (Department) is adopting, without changes, the amendment of §1.2, as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7328-29), concerning the Department's complaint system, and therefore, will not be republished.

No comments were received concerning this amendment.

The purpose of this section is to include additional documentation that will be kept in each complaint file, as well as notification requirements of the Department to the person filing the complaint and to each person who is a subject of the complaint as required by the amendments to the Texas Government Code, §2306.066, enacted by the 77th Texas Legislature through Senate Bill 322.

The adopted amendment affects no other code, article or 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 20, 2002.

TRD-200206139
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 10, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 475-3726

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.101, §100.105

The State Board of Education (SBOE) adopts an amendment to §100.101 and new §100.105, concerning open-enrollment charter schools. Section 100.101 incorporates requirements in Texas Education Code (TEC), §12.111, that each charter specify the powers or duties of the governing body and TEC, §12.119, that the SBOE prescribe the period and manner of submission of an annual charter governance report, including articles of incorporation and bylaws. The amendment to §100.101 changes a requirement relating to the submission of articles of incorporation or bylaws. Amended §100.101 is adopted without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6933) and will not be republished. New §100.105, which clarifies applicability of existing rule and statute to public senior college or university charter schools, is adopted with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6933).

Senate Bill (SB) 1, 74th Texas Legislature, 1995, granted the SBOE the authority to establish up to 20 open-enrollment charter schools to eligible entities. In 1997, the 75th Texas Legislature granted the SBOE the authority to approve 100 additional open-enrollment charters and an unlimited number of open-enrollment charters to serve students at risk of dropping out of school. House Bill (HB) 6, 77th Texas Legislature, 2001, called for the combination of these two types of charters into one open-enrollment category and limited the number of charters to 215. In addition, HB 6 granted the SBOE the authority to approve an unlimited number of charters to public senior colleges or universities.

The adopted amendment to 19 TAC §100.101 requires charter schools to submit the articles of incorporation or bylaws of the sponsoring entity only if either document has been altered during the year. The current rule requires that both documents be filed with the agency annually.

The adopted new 19 TAC §100.105 was submitted in response to TEC, Chapter 12, Charters, Subchapter E, College or University Charter School, as added by HB 6, 77th Texas Legislature, 2001. The bill allows the SBOE to grant open-enrollment charters to public senior colleges or universities under different conditions than other open-enrollment charters. The adopted new 19 TAC §100.105 clarifies the applicability of existing rule and statute to this new category of open-enrollment charter schools. In order to clarify the type of colleges or universities to which this new provision applies, a modification was made to the title and within the rule text to specifically reference public senior college or university charters.

The effective date for the amendment and new rule is 20 days after filing as adopted with the *Texas Register*. In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2003. This earlier effective date is necessary in order for the rules to conform to the recently enacted HB 6 and for the rules to apply to subsequent application cycles.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Education Code (TEC), §12.119 and §12.154, amended and added by HB 6, 77th Texas Legislature, 2001, which: (1) specifies that a charter holder shall file with the SBOE a copy of its articles of incorporation and bylaws within the period and in the manner prescribed by the SBOE; and (2) authorizes the SBOE to grant open-enrollment charters to public senior colleges or universities in accordance with criteria determined by the SBOE.

§100.105. 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 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 23, 2002.

TRD-200206162
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: October 13, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-9701

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

The State Board of Education (SBOE) adopts amendments to §§109.1, 109.23, 109.25, 109.51, and 109.52 concerning budgeting, accounting, and auditing. Section 109.25 and §109.51

are adopted with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6934). Sections 109.1, 109.23, and 109.52 are adopted without changes to the proposed text and will not be republished.

Section 109.1 provides for a uniform system of accounting in public schools. Under current rules, school districts must utilize a uniform accounting system and maintain certain information for reporting to the agency. Section 109.23 and §109.25 provide for the completion and review of independent audits and reporting and auditing for state compensatory education funds. School districts are held accountable for the use of compensatory education allotments through desk reviews and detailed investigations as needed to assure compliance with the limitations in statute and rule. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid form prescribed by the SBOE. Section 109.52 establishes the requirement that each school district select a bank as school depository and enter into a depository contract with the bank. A school district may select and contract with more than one bank. The section includes the depository contract form with the content prescribed by the SBOE.

The adopted amendment to §109.1 clarifies that charter schools are included in the public school requirements relating to budgeting, accounting, financial reporting, and auditing.

The adopted amendment to §109.23 adds the agreed-upon procedures report for the state compensatory education program.

The adopted amendment to §109.25 clarifies applicability to charter schools. In response to public comment, this section was modified to substitute the phrase "school district and charter school" rather than "public school." The adopted amendment also changes wording to provide clarification that costs charged to state compensatory education shall be for programs and services that supplement the regular education program.

For clarification purposes, language was modified in §109.51(a) to specify that the bid form must be mailed to each bank located in the school district. No changes were made to the revisions in the uniform bank bid form entitled "Bid Form for Acting as Depository for All Funds," which is referenced as Figure 19 TAC §109.51(b).

The adopted amendment to the rule text in §109.52 adds reference to depository contract filing requirements for charter schools, in accordance with 19 TAC §100.1043, Status and Use of State Funds; Depository Contract. The depository contract form entitled "Depository Contract for Funds of Independent School Districts Under Texas Education Code, Chapter 45, Subchapter G, School District Depositories," is referenced as Figure 19 TAC §109.52(b). No changes were made to the form in this section since published as proposed.

No changes were made to the revisions to modify the bid form in §109.51 and the contract form in §109.52 since published as proposed. The adopted revisions include wording to eliminate the necessity of districts submitting copies of safekeeping receipts to the agency and to specify that the depository and district records are subject to audit at any time. The revisions also reorder the provision relating to the venue for litigation arising from a contractual dispute. Another revision removes the beginning and ending dates of September 1 and August 31 to allow for changes in fiscal year and would allow a district and its depository to mutually agree to extend a depository contract for one additional two-year term. This revision includes new language regarding extension of the contract and bid. In addition, a revision to the contract form includes clarification of the provision relating to the collateral pledge agreement.

School districts are required to use a uniform bank bid form to obtain bids from depository banks located in the district at least 30 days before the termination of the current depository contract. However, school districts may add to the uniform bank bid form to specify additional depository requirements. Depository contracts have traditionally been executed for a two-year period, expiring on August 31 in odd-numbered years. Depository bank contracts are legal instruments that help ensure the security of all school district funds on deposit. Additionally, depository contracts contain contractual terms and conditions describing depository bank services and fees. The updates to the bid form and the contract form were reviewed and approved by the Texas Attorney General's Office. Recommendations made by the Texas Attorney General's Office were incorporated into the forms when filed as proposed.

The effective date of the amendments is 20 days after filing as adopted with the *Texas Register*. In accordance with TEC, §7.102(f), the SBOE approved the rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2003. This earlier effective date is necessary in order to implement necessary changes to depository contracts for the 2002-2003 school year.

The following comment was received regarding adoption of the amendments.

Comment. The Texas Association of School Boards (TASB) expressed concerns that changing the words "school district" to "public school" might be interpreted to mean that each individual public school campus is responsible for the bulk of documentation and reporting related to compensatory education funds. They felt that such a change would result in added paperwork and staff time for district campuses. TASB stated that the responsibility for these duties lies primarily with each school district's administrative office. TASB recommended that the phrase "school district and charter school" be used rather than "public school."

Agency Response. Campuses are already responsible for implementing campus improvement plans that explain use of the foundation school program compensatory education allotment. The proposed wording change from district to public school should not create a burden on individual campuses; however, the SBOE modified §109.25 to substitute the phrase "school district and charter school" rather than "public school."

SUBCHAPTER A. BUDGETING, ACCOUNTING, FINANCIAL REPORTING, AND AUDITING FOR SCHOOL DISTRICTS

19 TAC §109.1

The amendment is adopted under the Texas Education Code, §§7.102(c)(33), 44.001, 44.002, 44.007, and 44.008, which authorizes the SBOE to adopt rules as necessary for the administration of provisions related to school district funds.

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 23, 2002.

TRD-200206163
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: October 13, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-9701

SUBCHAPTER B. TEXAS EDUCATION AGENCY AUDIT FUNCTIONS

19 TAC §109.23, §109.25

The amendments are adopted under the Texas Education Code, §§7.102(c)(33), 44.001, 44.008, 44.010, and 42.152, which authorizes the SBOE to adopt rules as necessary for the administration of provisions related to school district funds and to develop and implement a reporting and auditing system for district and campus expenditures of compensatory education funds.

§109.25. State Compensatory Education Program Reporting and Auditing System.

(a) Each school district and charter school shall report financial information relating to expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency (TEA). Each school district and charter school shall report the information according to standards for financial accounting provided in §109.41 of this title (relating to Financial Accountability System Resource Guide.) The financial data will be reported annually through the Public Education Information Management System. The commissioner of education shall ensure that districts follow guidelines contained in the "Financial Accountability System Resource Guide" in attributing supplemental direct costs to state compensatory education and accelerated instruction programs and services. Costs charged to state compensatory education shall be for programs and services that supplement the regular education program.

(b) Each school district and charter school shall ensure that supplemental direct costs and personnel attributed to compensatory education and accelerated instruction are identified in district and/or campus improvement plans at the summary level for financial units or campuses. Each school district and charter school shall maintain documentation that supports the attribution of supplemental costs and personnel to compensatory education. School districts and charter schools must also maintain sufficient documentation supporting the appropriate identification of students in at-risk situations, under criteria established in Texas Education Code (TEC), §29.081.

(c) The TEA shall conduct risk assessment and desk audit processes to identify the school districts, charter schools, or campuses most at risk of inappropriate allocation and/or underexpenditure of the compensatory education allotment. In the risk assessment and desk audit processes, the TEA shall consider the following factors:

(1) aggregate performance of students in at-risk situations on the state assessment instruments that is below the standards for the "acceptable" rating, as defined in the state accountability system;

(2) the financial management of compensatory education funds; and/or

(3) the quality of data related to compensatory education submitted by a school district or charter school.

(d) The TEA shall use the results of risk assessment and desk audit processes to prioritize school districts or charter schools for the purpose of on-site visits and may conduct on-site visits.

(e) The TEA shall issue a preliminary report resulting from a desk audit or an on-site visit before submitting a final report to the school district or charter school. After issuance of a preliminary report, a school district or charter school must file with the TEA the following:

(1) a response to the preliminary report within 20 calendar days from the date of the preliminary report outlining steps the school district or charter school will take to resolve the issues identified in the preliminary report; and

(2) a corrective action plan within 60 calendar days from the date of the preliminary report if the school district's or charter school's response to the preliminary report does not resolve issues identified in the preliminary report.

(f) The TEA shall issue a final report that indicates whether the school district or charter school has resolved the findings in the preliminary report and whether the corrective action plan filed under subsection (e)(2) of this section is adequate.

(1) If the final report contains a finding of noncompliance with TEC, §42.152(c), the report shall include a financial penalty authorized under TEC, §42.152(q).

(2) If the school district or charter school responds with an appropriate corrective action plan, the TEA shall rescind the financial penalty and release the amount of the penalty to the school district or charter school.

(g) The TEA may conduct an on-site visit to verify the implementation of a school district's or charter school's corrective action plan.

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 23, 2002.

TRD-200206164
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: October 13, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-9701

SUBCHAPTER D. UNIFORM BANK BID AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The amendments are adopted under the Texas Education Code (TEC), §7.102(c)(34), which requires the SBOE to prescribe uniform bid blanks for school districts to use in selecting a depository bank as required under TEC, §45.206; and §45.208, which requires the SBOE to prescribe the form and content of a depository contract or contracts, bond or bonds, or other necessary instruments setting forth the duties and agreements pertaining to a depository.

§109.51. Uniform Depository Bank Bid Form.

(a) Each school district is to use a uniform bid blank form as specified in Texas Education Code, §45.206. A school district may add other terms to the uniform bid blank form based on additional requirements. This form must be mailed to each bank located in the school district at least 30 days before the termination of the current depository contract. This form must be filed with the Texas Education Agency in accordance with filing instructions specified in the form.

(b) The uniform bid blank form is provided in this subsection entitled "Bid Form for Acting as Depository for All Funds."
Figure: 19 TAC §109.51(b)

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 23, 2002.

TRD-200206165
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: October 13, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. PRACTICE AND PROCEDURE
SUBCHAPTER B. APPLICATION FOR LICENSE

22 TAC §131.51

The Texas Board of Professional Engineers adopts an amendment to §131.51, relating to Authority. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6169). The text of the rule will not be republished.

The amendment omits language permitting non-Texas residents holding a valid license issued by a proper authority in another public jurisdiction to apply for licensure, eliminating any implication that non-Texas residents who are *not* licensed in another state are prohibited from applying for licensure in Texas. Because the Texas Engineering Practice Act does not distinguish between residents and non-residents for purposes of determining an applicant's competency or qualifications to be licensed as a professional engineer, the amended section eliminates this implicit distinction from the rule. The amendment also omits excess verbiage that is present in the current rule. The purpose of the amendment is to clarify the rule's applicability to non-Texas residents and to make the rule more easily understood by those who wish to become licensed as professional engineers and by other readers.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206181
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.52

The Texas Board of Professional Engineers adopts an amendment to §131.52, relating to Applications for a Professional Engineer License. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6170). The text of the rule will not be republished.

The amendment adds language stating that a person must submit a completed application to the board to be eligible for licensure as a professional engineer. The amendment also adds language indicating that proficiency in speaking and writing the English language may be demonstrated by passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550 or a computer score of at least 200. The amendment also reflects a change in the name of the Texas Ethics of Engineering Examination to the Texas Engineering Professional Conduct and Ethics Examination and adds language requiring that an applicant for licensure submit certain supporting documentation related to criminal convictions.

The amendment also adds language indicating that the board will not accept a new or amended application from an applicant once an application from an applicant once an application from that person has been reviewed and the board has approved an applicant for licensure subject to passage of an examination and before a license has been issued or denied. This new language is proposed to clarify that an applicant cannot have more than one application before the board at any one time and that, once an application has been reviewed and approved by the board, an applicant cannot modify his or her application by seeking a waiver of the examination requirement, for example. The board currently receives, on a fairly regular basis, such requests for waiver from applicants whose applications have been reviewed and approved by the board, and who have taken and failed one or more of the required examinations. The amendment is intended to reduce the administrative inefficiency that would result

to the board and its staff from re-reviewing an application that has already been reviewed once. In addition, to satisfy its statutory responsibilities of ensuring that the public health, safety, and welfare is protected, the board is of the opinion that once an applicant for licensure has taken and failed a nationally-recognized competency examination, the applicant must gain additional experience or education to demonstrate competency in his or her engineering discipline such that he or she is qualified for a waiver.

The amendment also deletes subsection (h), which currently provides for certain restrictions and procedures in connection with the board's review of applications for licensure. Finally, the amendment omits excess verbiage and redundancies that are present in the language of the current rule, thereby making the rule more easily understood by those who wish to become licensed as professional engineers and by other readers.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas. The amendment is also adopted pursuant to Occupations Code §53.021, which authorizes a licensing authority to deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation; and pursuant to Occupations Code §§53.022 and 53.023, which set forth the factors a licensing authority is required to consider in determining whether such an application should be denied.

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 23, 2002.

TRD-200206182
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.53

The Texas Board of Professional Engineers adopts an amendment to §131.53, relating to Applications - General. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6172). The text of the rule will not be republished.

The amendment adds a subsection (f), which is currently in §131.55 of this title (concerning Certification of Qualifications), a section that is being repealed concurrently with this amendment. Subsection (f) allows a certification from the National Council of Examiners for Engineering and Surveying to be accepted as verification of an original transcript from a U.S. school, to verify licenses held or examinations taken by an applicant, or for other purposes as determined appropriate by the board's executive director on a case-by-case basis. The amendment also makes several minor grammatical corrections to subsection (a) of the rule.

The amendment, together with the repeal of existing §131.55, simply transfers a provision allowing an applicant to rely on the NCEES certification for verifying certain information to a different rule of the board that more generally addresses applications for licensure, a more logical and relevant place within the board's rules for this provision. Another purpose of the amendment is to correct certain grammatical errors presently in the rule.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206183
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.54

The Texas Board of Professional Engineers adopts an amendment to §131.54, relating to Applications from Former Texas License Holders. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6173). The text of the rule will not be republished.

The amendment removes the requirement that an applicant provide a supplementary experience record for all employment engagements from the date the license expired, but retains the requirement that the applicant provide such information for at least the last four years of engineering experience to meet the minimum requirements of the Texas Engineering Practice Act and adds language that permits the engineering experience to include experience gained by the applicant before the previous

license expired. The amendment also eliminates language requiring an applicant to submit references that conform to the requirements of §131.81(a)(3) of this title (relating to Experience Evaluation) and §131.101(g) of this title (relating to Engineering Examinations required for a License to Practice as a Professional Engineer); this is because all requirements for references are being consolidated into one rule, §131.71 of this title (relating to References), pursuant to other rule changes being proposed concurrently with this proposed amendment. Finally, the amendment changes the name of the Texas Ethics Examination to the Texas Professional Conduct and Ethics Examination.

The amendment creates a more clear and efficient application process for individuals who were previously licensed by the board but whose licenses have been expired for two or more years. Another purpose of the amendment and other rule changes adopted concurrently with this amendment is to organize the board's rules in a more logical manner, allowing persons interested in becoming licensed and other readers to better understand the board's licensure requirements contained in this amended section and other board rules related to licensure.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206184
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.55

The Texas Board of Professional Engineers adopts the repeal of §131.55, relating to Certification of Qualifications. The repeal is adopted without changes to the proposal as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6174). The text of the rule will not be republished.

Section 131.55 currently provides that a certification from the National Council of Examiners for Engineering and Surveying (NCEES) is acceptable to the board as verification of an original transcript from a U.S. school, to verify licenses held or examinations taken by an applicant, or for other purposes as determined appropriate by the board's executive director on a case-by-case basis. Rather than eliminating the provision allowing an applicant to rely on the NCEES certification, this provision is being moved to another of the board's rules, §131.53 of this title, concerning Applications - General, by an amendment of that section that is being adopted by the board concurrently with this repeal.

The repeal is adopted to provide a more clear organization of the board's rules by placing all general requirements of applicants in one rule, allowing potential licensees and the general public to more quickly and easily understand the board's requirements of applicants for licensure.

No comments were received regarding the board's adoption of the repeal.

The repeal is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206185
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.55

The Texas Board of Professional Engineers adopts new §131.55, relating to Applications from Engineering Educators. The new section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6175). The text of the rule will not be republished.

The new section sets forth the minimum qualifications, and an alternate application procedure, for licensure as an engineering educator. The new section also permits those who instruct engineering courses to seek licensure utilizing the alternate application process but specifically provides, in subsection (c), that it does not prohibit an engineering educator from applying for licensure utilizing the standard application process. This alternate procedure allows certain persons who have earned a doctoral degree in engineering or other related field of science or mathematics who began teaching engineering prior to September 1, 2001, to apply for licensure using an alternate application form; to provide the board with a resume or curriculum vitae in lieu of a supplementary experience report unless the applicant is

a non-tenured faculty member; to seek waiver of the Fundamentals of Engineering Examination and/or the Principles and Practices Examination under certain circumstances, as described in the rule; and to submit reference statements or letters of recommendation from five individuals, three of whom must be professional engineers and can be other engineering educators or professional engineers from outside academia.

No comments were received regarding the board's adoption of the new section.

The new section is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which sets forth the general requirements for licensure as a professional engineer in Texas and delegates to the board the authority to evaluate applications and to adopt rules providing for the waiver of all or part of the examination requirement under the Texas Engineering Practice Act.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206186
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

SUBCHAPTER C. REFERENCES

22 TAC §131.71

The Texas Board of Professional Engineers adopts an amendment to §131.71, relating to References. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6176). The text of the rule will not be republished.

Section 131.71 requires applicants for licensure as a professional engineer in Texas to submit references to verify character, suitability for licensure, and all engineering experience claimed by the applicant to meet the minimum years of experience required by the Texas Engineering Practice Act. Section 131.71 also describes the procedures followed by the board and sets forth certain requirements of references that are provided in connection with applications for licensure. The amended section reorganizes these procedures and requirements in a more clear and direct fashion, ensuring that they will be more easily understood by those who wish to become licensed as professional engineers and by other readers.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206187
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

22 TAC §131.72

The Texas Board of Professional Engineers adopts an amendment to §131.72, relating to Reference Statements. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6177). The text of the rule will not be republished.

Section 131.72 describes the manner in which reference statements provided in connection with an application for licensure as a professional engineer should be completed, sealed, and returned to the board. The amendment re-states most of the current rule's requirements in a more logical and understandable fashion and addresses reference statements separately depending on whether the reference is to verify character or engineering experience. The amendment also adds a new subsection (f), which states that secured reference envelopes shall be submitted to the board by either the applicant or by the reference provider. This provides greater flexibility to applicants for licensure to arrange for the submission of reference statements to the board in a manner that is most convenient for the applicant and for reference providers.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which sets forth the general requirements for licensure as a professional engineer in Texas and delegates to the board the authority to evaluate applications for licensure as well as the responsibility to determine whether applicants have the requisite number of years of active practice in engineering work, whether the applicant's engineering experience

is of a character that is satisfactory to the board, and whether the applicant is of good character and reputation.

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 23, 2002.

TRD-200206212
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

SUBCHAPTER D. ENGINEERING EXPERIENCE

22 TAC §131.81

The Texas Board of Professional Engineers adopts an amendment to §131.81, relating to Experience Evaluation. The amended section is adopted with changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6178). The text of the rule will be republished.

Section 131.81 currently describes the information documenting engineering experience that is required of an applicant for licensure as a professional engineer in Texas and the board's procedures and criteria for evaluating such information. The amendment reorganizes some of this information in a more logical, readable, and grammatically correct fashion, and adds the requirement that an applicant's supplementary experience record be divided into employment engagements that correspond to those listed in the application for licensure.

In addition, the teaching of engineering subjects by persons who began teaching prior to September 1, 2001, has been added to the board's list of activities that constitute satisfactory engineering work for purposes of the board's evaluation for licensure. This is added to clarify that teaching experience is considered by the board to be creditable engineering work experience for purposes of licensure. However, the requirement that the applicant began teaching prior to September 1, 2001, brings the proposed amendment into conformance with a legislative amendment resulting from the enactment of SB 1797 during the 77th Legislature, which amended the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §§2 and 12 by removing from the statutory definition of the "practice of engineering" or the "practice of professional engineering" the teaching of advanced engineering subjects and by providing that engineering teaching may not be construed as the active practice of engineering. This legislative change was expressly made inapplicable to those who began teaching prior to September 1, 2001.

The amendment also clarifies that experience credit for all post-baccalaureate degrees is limited to a total of two years. The purpose of this proposed amendment is to set a limit on the number of years of engineering experience that the board will recognize in connection with an applicant's earning any post-baccalaureate engineering degrees. In addition, the amendment states that experience gained in conjunction with or in relation to earning a post-baccalaureate degree, such as research or teaching assistant work, will not be credited in addition to experience credited pursuant to paragraph (c) of the section. This limitation is intended to distinguish between such experience and other engineering experience that an applicant may have gained simultaneously with, but independently of, the applicant's earning a post-baccalaureate degree. In the latter situation, the board does recognize the engineering experience gained by the applicant.

In addition to the above changes, which were included in the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6178), the board adopts the amended section with the following additional language in §131.81(b)(1): " Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience." This additional language serves to clarify that the term, "satisfactory engineering work," as used in this section, is synonymous with the term, "creditable engineering experience," as used in other board rules regarding application for licensure.

The amended section is intended to ensure that the board will receive documentation of engineering experience in connection with an application for licensure in a manner that will not only enable the board to more quickly and easily review and determine whether the applicant has documented sufficient engineering experience, both in terms of quality as well as quantity, but also will enable a reference provider to more quickly and easily identify the relevant portion(s) of the applicant's supplementary experience record for purposes of verification. In addition, by considering teaching experience that began prior to September 1, 2001, as creditable engineering work experience for purposes of licensure, the amended section recognizes that, although teaching experience has been removed from the definition of the practice of engineering in the Texas Engineering Practice Act, this only applies to teaching that began on or after September 1, 2001.

The amended section also clarifies that experience gained in conjunction with or in relation to earning a post-baccalaureate degree is distinguishable from experience gained simultaneously with, but independently of, the applicant's earning a post-baccalaureate degree, by more clearly informing applicants, reference providers, and the public of what kind of engineering experience, and the extent to which such experience, is recognized by the board.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which sets forth the general requirements for licensure as a professional engineer in Texas and delegates to the board the authority to evaluate applications for licensure as well as the responsibility to determine whether applicants have the requisite number of years of active practice in engineering work and whether the applicant's engineering experience is of a character that is satisfactory to the board.

§131.81. Experience Evaluation.

(a) Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure.

(1) The supplementary experience record shall be written by the applicant and shall:

(A) provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(B) clearly describe the engineering work that the applicant personally performed; and

(C) delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record shall be divided into employment engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to allow a reference provider to recognize and verify the quality and quantity of the experience claimed.

(3) Experience that is unsupported by references may not be considered. All experience claimed to meet the minimum requirements for licensure shall be verified by one or more currently licensed professional engineer(s) pursuant to §131.71 of this title (relating to References).

(4) The supplementary experience record must cover at least the minimum amount of time needed by the applicant for issuance of a license.

(A) Applicants applying under §12(a)(1) of the Act shall provide supplementary experience records for at least four years of engineering experience.

(B) Applicants applying under §12(a)(2) of the Act shall provide supplementary experience records for at least eight years of engineering experience.

(C) Applicants seeking a waiver from the Fundamentals of Engineering examination and/or the Principles and Practice of Engineering examination requirements shall provide a supplementary experience record for at least an additional eight years of experience beyond that required in this subsection.

(b) The board shall evaluate the nature and quality of the experience found in the supplementary experience record and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the submitted materials indicate good character and reputation;

(D) whether the experience was gained in accordance with the provisions of the Act;

(E) whether the experience was gained in one dominant branch;

(F) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice;

(G) whether short engagements have had an impact upon professional growth ; and

(H) experience gained in relation to or concurrent with the applicant's education. Experience claimed prior to an applicant's receiving a conferred degree must:

(i) be substantiated in the supplementary experience record;

(ii) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(iii) reflect that, at the time the experience was gained, the applicant:

(I) had successfully passed junior and senior level engineering courses and applied that engineering and knowledge in the claimed experience; or

(II) received sufficient education and training under the supervision of an engineer.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(c) One year of experience credit may be granted for each post-baccalaureate engineering degree earned by an applicant, provided:

(1) the applicant has a baccalaureate degree in engineering; and

(2) the post-baccalaureate degree is from an engineering program where either the graduate or undergraduate degree in the same discipline is accredited or approved by one of the organizations listed in §131.91(a)(1) of this title (concerning Educational Requirements for Applicants). Experience credit for all post-baccalaureate degrees is limited to a total of two years.

(d) Experience gained in conjunction with or in relation to earning a post-baccalaureate degree, such as research or teaching assistant work, will not be credited in addition to experience credited pursuant to subsection (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 23, 2002.

TRD-200206188
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

SUBCHAPTER G. BOARD REVIEW OF APPLICATION

22 TAC §131.111

The Texas Board of Professional Engineers adopts an amendment to §131.111, relating to Reviewing, Evaluating, and Processing Applications. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6180). The text of the rule will not be republished.

Section 131.111 describes the evaluation process for applications for licensure as a professional engineer in Texas. The proposed amendment provides that the executive director shall reject an application for licensure if it appears on the face of the application documents that the applicant does not possess the minimum criteria for licensure. It also clarifies circumstances in which the executive director may approve an application without further board action. It also allows an applicant to seek an extension from the executive director for submitting certain information that the executive director determines is missing from the application. The amended section also creates an exception to certain circumstances in which the executive may not to approve an applicant's request for waiver of examination(s), by providing that the executive director may approve such a request when the applicant has successfully passed the Principles and Practices Examination, is solely requesting a waiver of the Fundamentals of Engineering Examination, and has not been disciplined or otherwise sanctioned by this board or another state board that has jurisdiction over the practice of engineering.

The amendment also modifies the procedure by which an application is circulated among and reviewed by the professional engineer members of the board. While the current rule provides that circulation among the board members continues until a majority vote is cast, the amendment changes this procedure by providing that circulation continues until the application receives at least three votes either in favor of approving or denying the application; if an application does not receive three like votes in favor of approving the application, it will be referred to the licensing committee; and if the licensing committee either determines that the application should be denied or cannot reach a decision, the application will be referred to the board for a final determination.

The amendment also re-states in a more readable fashion certain provisions that are currently in the rule, thereby making the rule more easily understood by those who wish to become licensed as professional engineers and by other readers.

The amended section allows persons who are interested in becoming licensed as a professional engineer in Texas and the general public to better understand the procedures and criteria the board has adopted for reviewing an application for licensure and for determining whether the application should be approved or denied, as well as how and when decisions regarding an application for licensure will be conveyed to the applicant. The amended section also is intended to allow qualified applicants to experience a more swift processing of their applications due to the board's broader delegation to the executive director, professional engineer board members, and the board's licensing committee to approve applications for licensure without further action by the board under certain circumstances defined in the amendment.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §12, which delegates to the board the authority to evaluate applications and sets forth the general requirements for licensure as a professional engineer in Texas.

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 23, 2002.

TRD-200206189
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

SUBCHAPTER J. COMPLIANCE AND ENFORCEMENT

22 TAC §131.167

The Texas Board of Professional Engineers adopts an amendment to §131.167, relating to Disciplinary Actions. The amended section is adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6182 and 6394). The text of the rule will not be republished.

Section 131.167 currently sets forth the procedures the board follows in connection with disciplinary actions against licensed professional engineers and non-licensed individuals who are alleged to have violated the Texas Engineering Practice Act or board rules; the rule also currently provides two tables of suggested sanctions that the board may impose against license holders and non-license holders, respectively, if the board determines that such violations occurred. The amendment replaces the sanction table in subsection (h) with a more comprehensive listing of potential violations and also changes some of the suggested sanctions for violations that are listed in the current sanction table. The amendment also changes the sanction table in subsection (i) by adding language that clarifies that the table is applicable to firms as well as unlicensed individuals, and by changing the sanction, "Cease and Desist Order," to "Notice to Cease and Desist." In addition, the amendment adds two additional tables of suggested sanctions in new subsections (j) and (k); subsection (j) provides a table of suggested sanctions for violations of the firm registration and sole proprietorship registration requirements of Act and board rules, and subsection (k) provides a table of suggested sanctions against public entities for violations of Section 19 of the Texas Engineering Practice Act.

The amended section more clearly defines the types of sanctions the board has determined to be appropriate for various violations of the Texas Engineering Practice Act and board rules, allowing the regulated community and the public to be better informed of possible violations of the Texas Engineering Practice Act and the consequences of such violations.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §8, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and which authorizes the board to impose certain sanctions against licensed professional engineers and to seek injunctive relief to enjoin violations of the Texas Engineering Practice Act and board rules; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §§22 and 22C, which authorize the board to impose certain sanctions and administrative penalties if the board determines that violations of the Texas Engineering Practice Act and/or board rules have occurred; and pursuant to the Texas Engineering Practice Act, Tex. Rev. Civ. Stat. Ann. art. 3271a, §23, which authorizes the board to refer matters for criminal prosecution if the board determines that violations of the Texas Engineering Practice Act and/or board rules have occurred.

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 23, 2002.

TRD-200206190
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: October 13, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 440-7723

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts amendments to §329.1, concerning General Licensure Requirements and Procedures, without changes to the proposed text as published in the May 24, 2002 issue of the *Texas Register* (27 TexReg 4521).

The amendments bring the Board's educational requirements into agreement with the latest standards set by the Commission on Accreditation of Physical Therapy Education (CAPTE).

The amendments eliminate references to the bachelor's degree in physical therapy, and refer foreign-trained applicants to a different rule for applicable requirements.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206170
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 13, 2002
Proposal publication date: May 24, 2002
For further information, please call: (512) 305-6900

22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants, without changes to the proposed text as published in the May 24, 2002, issue of the *Texas Register* (27 TexReg 4521) and will not be republished.

The amendments bring the Board's educational requirements into agreement with the latest standards set by the Commission on Accreditation of Physical Therapy Education (CAPTE).

The amendments specify what type of entry-level degree is required for applicants receiving the degree before or after December 31, 2002.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on September 23, 2002.

TRD-200206169
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 13, 2002
Proposal publication date: May 24, 2002
For further information, please call: (512) 305-6900

CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.3

The Texas Board of Physical Therapy Examiners adopts amendments to §346.3, concerning the Early Childhood (ECI) Setting, with changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6794). This new rule addresses the provision of physical therapy services within the setting of Early Childhood Intervention (ECI). The changes include moving the reference to the existing rule regarding referrals from subsection (c) to (b), and the addition of a statement to clarify the difference between two distinct services, physical therapy and developmental rehabilitation services.

The changes clarify that physical therapy treatment cannot be provided without a referral, and that developmental rehabilitation services are in no way physical therapy services.

Comments were received from the Texas Physical Therapy Association and The Texas Medical Association regarding this section. TPTA and TMA suggested moving the reference to the existing requirement for referrals to a different subsection of the new rule, and also suggested the addition of wording in the final subsection of the rule to ensure that the difference between the actions taken by a PT as developmental rehabilitation services and those as physical therapy is clear. The Board has determined that the changes do not alter the PT's role or responsibilities in the provision of services in the ECI setting, and will to make these minor changes as requested.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§346.3. Early Childhood (ECI) Setting.

(a) In the provision of early childhood services through the Early Childhood Intervention (ECI) program, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill family-centered goals. When a child is determined by the PT to be eligible for physical therapy, the PT provides written recommendations to the Interdisciplinary Team as to the amount of specific services needed by the child.

(b) Subject to the provisions of §322.1 of this title, the PT implements physical therapy services in accordance with the recommendations accepted by the Interdisciplinary Team, as stated in the Individual Family Service Plan (IFSP).

(c) The types of services which require a referral from a qualified licensed healthcare practitioner include the provision of individualized specially designed instructions, direct physical modeling or hands-on demonstration of activities with a child who has been determined eligible to receive physical therapy. Additionally, a referral is required for services that include the direct provision of treatment and/or activities which are of such a nature that they are only conducted with the child by a physical therapist or physical therapist assistant.

(d) The physical therapist may provide general consultation or other program services, including developmental rehabilitation services (DRS), to address child/family-centered issues, and as such, DRS is not physical therapy. Supervision by the PT in provision of developmental rehabilitation services refers to case supervision, i.e., monitoring the needs of the child/family, not supervision of the personnel providing those services, and as such, DRS is not physical therapy.

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 23, 2002.

TRD-200206168

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 13, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 305-6900

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER X. PREFERRED PROVIDER PLANS

28 TAC §3.3703

The Commissioner of Insurance adopts amendments to §3.3703, concerning required contracting provisions for preferred provider plans. The amendments are adopted with changes to the proposed text as published in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5059).

The amendments address the disclosure of certain information concerning fee schedules and coding procedures that affect the payment for services provided by physicians and other health care providers pursuant to a preferred provider contract with an insurer that is subject to Texas Insurance Code Art. 3.70-3C. The amendments implement Art. 3.70-3C, Sec. 3A(i), which states that insurers shall provide preferred providers with copies of all applicable claim processing policies or procedures. The amendments clarify that an insurer must disclose information concerning fees and coding that affects the payment to be made to a preferred provider for services that the preferred provider has contracted to provide on behalf of an insurer. Lack of contractual access to this information may have prevented some preferred providers from ascertaining whether they had been compensated according to the terms of their contracts with insurers. The adopted amendments are designed to address this situation.

The department's proposed rule contained two alternatives, each intended independently to accomplish the stated purpose. Alternative one was contained at §11.901(10) and alternative two was contained at §11.901(11) of the proposed rule. After receiving comments, the department has decided to adopt the first alternative, with changes from the proposed version. In response to comments and for clarification, the department has changed §3.3703(a)(11), (a)(20), (a)(20)(A), (a)(20)(A)(i)(I) and (II), (ii), (iv), (vii), (B), (B)(i) - (iii), (D), (F), (G)(i) and (ii). None of the changes introduce a new subject matter or affect additional persons other than those subject to the proposed rule as originally published.

The amendments to §3.3703(a)(11) require that a contract between a preferred provider and a carrier contain terms regarding compliance with all applicable prompt pay statutes and regulations. The adopted alternative, new paragraph (20) to §3.3703(a), requires that upon request from a preferred provider, a carrier must provide preferred provider-specific information in a level of detail so that a reasonable person with sufficient training, experience and competence in claims processing (skilled reasonable person) can determine the payment to be made according to the terms of the contract. The request may be provided by any reasonable and verifiable means, such as e-mail or facsimile. The information the carrier must provide must include a preferred provider-specific summary and explanation of all methodologies that will be used to pay claims submitted in accordance with the contract, including a fee schedule, any applicable coding methodologies, bundling processes, downcoding policies, and any other applicable policy or procedure used by the insurer in paying claims for covered services under the contract. The information provided includes preferred provider-specific fee schedules that pertain to the range of health care services reasonably expected to be provided under the contract by that preferred provider. Additionally, the insurer must provide any addendum, schedule, exhibit or policy necessary to provide a reasonable understanding of the information that is being disclosed to the preferred provider. For example, a fee schedule that indicates that the insurer will reimburse certain claims at a usual and customary rate must explain how the insurer will determine the usual and customary rate for a particular service. An insurer may provide any required information using any reasonable method that is accessible by the preferred provider, including e-mail, computer disks, paper or access to an electronic database. If information is held by an outside source and is not within the control of the insurer, such as state Medicaid or federal Medicare fee schedules, the insurer must explain the procedure by which the preferred provider may access the outside source. An insurer that cannot provide the information required by §3.3703(a)(20) due to copyright laws or a licensing agreement may supply a summary of the required information. However, the summary must be sufficient to allow the preferred provider to determine the payment to be made under the contract. Any claims payment information required to be provided pursuant to this paragraph may be amended, revised or substituted only upon written notice to the preferred provider at least 60 calendar days prior to the effective date of the amendment, revision or substitution. The requirements added by paragraph (20) apply to all insurers as of the effective date of these amendments. Upon receipt of a request, the insurer must provide the information by the later of the 90th day after the effective date of the rule or the 30th day after the insurer receives the request. However, for contracts entered into or renewed on or after the effective date of these amendments, the insurer must provide the required information upon request contemporaneously with other contractual materials. Some carriers commented that they already have procedures established and are currently providing this information to their preferred providers. The department acknowledges that fact and expects that the rule's establishment of a timeframe for carriers that have not yet implemented such procedures will not interrupt this practice.

A preferred provider receiving information pursuant to paragraph (20) may not use or disclose the information for any purpose other than practice management or billing activities. A preferred provider may not use the information to misrepresent the level of services actually performed when submitting a claim under the contract. Information provided pursuant to these amendments about a particular service does not constitute a verification that the service a preferred provider has provided or proposes to provide is a covered benefit for a particular insured. Paragraph (20) is not intended to dictate the types of practices, policies or procedures that relate to or affect the claims payment process

an insurer may elect to employ. In addition, other plan requirements, including deductibles, co-payments, co-insurance, or annual, lifetime or benefit maximums may also affect the actual amount of reimbursement.

Where applicable, the department has indicated comments received on the comparable Chapter 11 rule, §11.901, published elsewhere in this issue of the *Texas Register*, by enclosing the reference in brackets.

General

Comment: Some commenters support the proposed rule's first alternative requiring the contract to contain the fee schedule or clear reference to any other appropriate documents. The commenters appreciate the detail and extent to which TDI recognizes that physicians and providers need to be able to completely understand how they will be reimbursed. These commenters do not support alternative two because they believe that the information should not have to be requested since price is an essential element of the contract. Another commenter notes that alternative two leaves some disclosures open for negotiation, but contends that most physicians cannot successfully negotiate the inclusion of these terms because managed care companies will not accept changes to their contracts. A commenter suggests that, if alternative two is adopted, it should contain all of the detail from alternative one (along with the commenter's suggested modifications to same). A commenter suggests that TDI adopt a "hybrid" of alternatives one and two that requires the disclosure of the information, upon request, to minimize unnecessary expenditures and provide access to appropriate information.

Agency Response: The department appreciates the commenters' input on the alternatives. The department recognizes that there are questions concerning the sufficiency of the information that carriers are currently providing to preferred providers. As previously noted, the commissioner has adopted alternative one with changes as a reasonable compromise which preserves the rule's intent yet addresses the commenters' concerns.

Comment: A commenter recommends that, consistent with HB 610, the selected alternative be modified to require carriers to disclose their utilization review policies.

Agency Response: The department believes that the requirements of Art. 3.70-3C, §3A make the addition of the suggested language unnecessary. The department will continue to monitor this issue to determine if future rulemaking is warranted.

Comment: Some commenters request that the department specifically exclude workers' compensation carrier networks (WCCN) from the rule. The commenters point out that Texas Labor Code §§408.0221 and 408.0223 adopt Art. 3.70-3C by reference as a minimum standard. The commenters want to avoid confusion, and also believe that it would be difficult for workers' compensation carriers to comply with the rule due to the use of third-party vendors to handle medical claims. A commenter is concerned that the notice of proposed rulemaking focused more on getting comments from health insurers than from workers' compensation insurers, and if workers' compensation insurance is not excluded recommends that the rule be republished so the workers' compensation industry has an opportunity to comment.

Agency Response: The department disagrees and declines to make this change. While the Labor Code adopts Art. 3.70-3C as a minimum standard for WCCNs, it does so only to the extent they are consistent with the subtitle. Labor Code §§408.0222(g) and 408.0223(d). Initially, the department notes that the statutory requirement takes precedence over any action it may take with regard to this rule. Moveover, the Texas Workers' Compensation Commission (TWCC), not TDI, is the relevant agency adopting standards for WCCNs and thus determining whether Art. 3.70-3C standards apply to WCCNs. TWCC, on behalf of the Healthcare Network Advisory Committee (HNAC), is responsible for developing the contract between carriers and health care providers in WCCNs, and the contract will control payment of the providers (Labor Code §408.0222(o)). In addition, Labor Code §413.011 (Reimbursement Policies And Guidelines; Treatment Guidelines) requires the TWCC to establish health care provider fee schedules, "including applicable payment policies relating to coding, billing, and reporting...." Commenters should thus address to TWCC or the HNAC any concerns regarding the applicability to WCCNs of standards adopted in this rule or enacted in Art. 3.70-3C.

Any overlap between the Insurance Code and the Labor Code means that each standard under Art. 3.70-3C will require analysis to determine its consistency with analogous Labor Code provisions. As contemplated in Labor Code §408.0221(f), the department will continue to work, as necessary, with HNAC, TWCC, and other appropriate agencies in the implementation of WCCNs, including analysis of the effect of Art. 3.70-3C and this rule on the networks.

The department provided the same general public notice upon publication of this rule proposal as it does for any other rule proposal. The prior notice was sufficient to apprise all interested persons of the possibility the rule could have an effect on workers' compensation insurance and allow them to comment. The department declines to republish the rule.

Costs: Some commenters contend that alternative one places an unnecessary and costly burden on carriers to provide information that would have little distinguishable benefit to physicians and providers. These commenters believe that the proposed rule's cost estimates have been underestimated and that the rule will have a detrimental impact on insurers, driving up the cost of health care premiums and adversely affecting the prompt payment of clean claims. Another commenter contends that the costs of complying with alternative one are at least double the costs of complying with alternative two, due to the requirement that the carriers mail hundreds of thousands of codes to thousands of physicians. Some commenters note that this mass mailing will result in some physicians and providers receiving inapplicable codes and other information, as well as burdensome documentation. A commenter contends that tailoring the package to individual providers would have a high price tag as well. The commenter claims that the anticipated cost burden from alternative one would include substantial overhaul of health plan contracts, provision of massive amounts of potentially irrelevant information to providers, review of information to assure compliance with the reasonable claims reviewer standard, revision of existing contracts within the 90-day timeframe, and provision of the 60-day notice of changes to the fee and claims review information. A commenter is concerned that alternative one is too prescriptive, and will increase administrative costs and interfere with updating and improvement of the claims payment system. Other commenters believe that the proposal will give providers a competitive advantage in health plan negotiations, and will make information widely available that will gradually erode provider discounts.

Some commenters note that this provision presupposes that a physician or provider is having claims payment issues with all the carriers with which it contracts, which has not been the commenters' experience. The commenters believe it would be punitive to require all carriers to provide the amount of information set forth in the rule when some preferred providers are satisfied with their relationship with some carriers.

The commenters contend that alternative two will be less costly and burdensome to administer because it requires the disclosure of the information at the request of the provider. The commenters believe this will enable the carriers to provide information more tailored to the physician's or provider's practice area.

Agency Response: The department appreciates the commenters' concerns regarding the cost and difficulty of implementation. The department does not intend the rule to place an undue burden on carriers or to inundate preferred providers with unnecessary information. Rather, it is the department's intent that preferred providers receive sufficient information so that a skilled reasonable person can determine the payment to be made in accordance with the contract. The department believes that the rule as adopted - which allows the information to be distributed electronically or by other means and upon request - is a reasonable compromise which preserves the rule's intent yet addresses the commenters' concerns. Regarding any potentially burdensome overhaul of contracts, the department has modified alternative one so that the required information itself is not set out at length in the contract. The department understands that implementation of the statute will likely result in preferred providers receiving more information during the contracting process than they currently do; however, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department also believes that some of the comments were based on the incorrect assumption that carriers must provide a comprehensive set of claims processing materials to every contracting provider rather than provider- or specialty-specific materials, as the rule states.

Internet Availability of Information: Some commenters suggest that carriers be permitted to comply with the requirement through an administrative guide, electronic- based communication, or upon written request from the preferred provider. The commenters also suggest that the carrier have the option to provide the information in the most cost effective manner. A few commenters suggest allowing the information to be accessed through the Internet by preferred providers utilizing a protected password. The commenters believe that this will reduce costs for the carrier and allow a certain level of security for what is considered proprietary information. Another commenter questions the efficacy of web security to protect confidential information.

A commenter agrees that it is reasonable to require agreed fee schedules to be included in the contracts. However, because there are many different adjudication methodologies in use, their wide-ranging variety and complexity make it unwieldy to include that information in a contract.

Agency Response: The department agrees with many of these comments and has modified alternative one to allow the information to be distributed upon request and by electronic or other means. The department acknowledges the concerns about web security, but notes that carriers have access to a variety of security measures to protect web-based information. Moreover, the rule allows carriers to provide information in any reasonable format, not just via the web.

§3.3703(a)(20), (B)(iv) & (D) [§11.901(10)(B)(iv) & (D)]: A commenter requests clarification that the proposal does not require existing contracts with providers to be rewritten. Another commenter recommends deletion of these clauses as burdensome and expensive because they would require a contract amendment every time an internal manual, memo or document is updated. A commenter objects to subparagraph (D) as being too broad, having a significant cost impact, and impeding quality improvement in claims processing systems. A commenter does not believe that the contract should be the main source for reimbursement policy information. The commenter explains that most of its contracts are evergreen, subject to termination notification requirements by either party. The commenter recommends that carriers be permitted the flexibility to adapt, improve and update their administrative processes without requiring amendment of contracts to accommodate internal changes. Some commenters believe that the rule should not pertain to routine process changes but should require notice to preferred providers of updates to schedules and claims payment software.

Agency Response: The department agrees and has modified alternative one so that the required information itself is not set out at length in the contract. Thus, an existing contract does not need to be rewritten but the required information must be provided to the preferred provider upon request. However, all new or renewed contracts must include the requirements of paragraph (20). The department believes making such materials available electronically will minimize the cost of informing preferred providers of changes. The department notes that the basic requirement of the rule is to ensure that preferred providers have sufficient information to determine the payment to be made in accordance with the contract, and this criterion should be used to determine when the 60-day notice is required.

§3.3703(a)(20) [§11.901(10)]: A commenter asserts that providing the voluminous information required by the proposal will slow down the negotiation of contracts, both during the 90-day compliance period and also at renewal time each year. This could cause a serious disruption in services.

Agency Response: The department understands that implementation of the statute will likely result in preferred providers receiving more information during the contracting process than they currently do. However, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department believes that the rule as adopted - which allows the information to be distributed electronically and upon request - is a reasonable compromise which preserves the statute's intent yet addresses the commenters' concerns. A request may be provided by any reasonable and verifiable means, such as facsimile or e-mail. The department expects that parties will negotiate in good faith and on a schedule designed to avoid a disruption of services.

Comment: A commenter notes that the proposal makes more sense for medical professionals than for facilities, as it believes that the American Medical Association (AMA) has a longer and better track record for standardizing treatment codes than does the American Hospital Association (AHA). The commenter advises that listing adjudication methodologies will not benefit facilities that insist upon contracts with a percent discount, as opposed to a per diem, case rate, or DRG basis.

Agency Response: The department appreciates the commenter's concern that some aspects of the rule may affect some preferred providers differently than others. The purpose of the

rule, however, is simply to assure the delivery of sufficient information for a skilled reasonable person to make a determination of the payment to be made under a contract, regardless of the particular fee schedule or billing practice.

§3.3703(a)(20) [§11.901(11)]: Some commenters support alternative two with changes. The commenters recommend a more balanced approach to disclosure that would also require preferred providers to disclose to carriers a list of their billed charges for treatment and services. The commenters believe that a dual disclosure process is necessary to maintain a balanced negotiation process that is not unduly weighted in favor of one party. The commenters also believe that this approach will be beneficial to consumers.

Agency Response: The department recognizes this concern, but notes that the department has limited authority over preferred providers and suggests that carriers address this issue in their contract negotiations.

§3.3703(a)(20)(B) & (C) [§11.901(10)(B) & (C)]: A commenter recommends adding references to utilization review (UR) criteria because these criteria are used to determine both medical necessity and the level of reimbursement to be paid.

Agency Response: The department declines to make this change as Art. 3.70-3C, §3A requires only the disclosure of UR policies. However, Insurance Code Art. 21.58A stipulates that providers are entitled to the UR determination of medical necessity for proposed services and sets forth the time table for notifying the provider of the decision. It further states that the notice of the UR decision must include a description or the source of the screening criteria upon which that decision is based.

§3.3703(a)(20)(A) [§11.901(10)(A)]: A few commenters suggest removing the word "reasonable" before the word "person" because it is redundant in context. Some commenters recommend deleting the word "summary" because the term is inconsistent with the type of detailed information that must be provided.

Agency Response: The department disagrees that the word "reasonable" is redundant. Sufficiency of the information is gauged in part by the recipient, who must be reasonable as well as possess sufficient training, experience, and competence in claims processing. The department is using the reasonable person standard because it is a well established legal benchmark.

As to deletion of "summary," the other requirements the rule places on summaries make the term specific and meaningful as a standard for compliance. So long as a carrier ensures that its summary includes sufficient information to meet the skilled reasonable person standard, it will be in compliance. The rule allows carriers flexibility to meet this requirement by utilizing any reasonable method that is accessible by the preferred provider.

§3.3703(a)(20)(C) [§11.901(10)(C)]: A commenter suggests that the rule should require that health plan contracts require training certification for provider billing staff.

Agency Response: The department disagrees that this is necessary, although a carrier can provide training for provider billing staff if it desires. The department believes that the skilled reasonable person standard contained in the rule is sufficient to address this concern.

§3.3703(a)(20)(A)(i), (i)(II) - (iv) [§11.901(10)(A)(i), and (i)(II) - (iv)]: A commenter recommends that the provisions describing the carrier's fee schedule be expanded to include certain billing codes or code groupings and per diem and case rate payments and that the services that are excluded from the per diem or case rate amounts be identified.

Some commenters recommend the addition of references to standard coding methodologies, utilization review criteria and policies developed or used by carriers, and procedures or revenue code groupings that contribute to the determination of case rates or per diem payments. Some commenters also seek definitions for "bundling," "downcoding," "component codes," "standard coding methodology," "nonstandard coding methodology" and "recoupment," as well as the phrase "global service periods, comprehensive codes, component codes and mutually exclusive procedures."

Agency Response: The department disagrees that this is necessary, as the rule makes clear that the carrier has to provide sufficient information so that a person meeting the skilled reasonable person standard can determine the payment to be made under the contract. Although the adopted rule does specify certain methodologies and processes, this is not an exclusive list. "Including" is a term of enlargement and not of limitation or exclusive enumeration. The department has combined subclauses (i) and (ii) to delete reference to "nonstandard." The department does not believe it is necessary to define the remaining terms, as they are widely recognized by the industry.

§3.3703(a)(20)(A)(i)(I) [§11.901(10)(A)(i)(I)]: A commenter recommends inserting the words "to be" before the word "submitted" to clarify that the carrier must disclose all fees related to all possible services the physician or provider may provide. The commenter believes that, as written, this could be interpreted to mean that a carrier must provide only fees associated with codes a physician has previously submitted.

Agency Response: The department disagrees, as it believes that the provisions as written are sufficiently clear to explain that the information to be provided is not limited to only those fees associated with codes a preferred provider has previously submitted. The carrier must provide the fee schedules and applicable codes and modifiers by which all claims for covered services will be calculated. This includes all services contemplated by the contract between the carrier and the preferred provider, regardless of whether claims for any of those services have been previously submitted.

§3.3703(a)(20)(A)(i)(II) [§11.901(10)(A)(i)(II)]: Some commenters suggest replacing the words "may request" with the words "will receive" so that the carrier cannot refuse to provide the fee schedules. A few commenters also suggest adding the phrase "by law" after the word "authorized" to clarify that the law allows for the disclosure of the information as well as clarify that the reference is to any services the physician may legally provide.

Agency Response: With regard to the first comment, the department believes that the adopted rule ensures the preferred provider will receive the information upon request. The department has removed the word "authorized" from the adopted rule and has substituted the language "intends to provide."

§3.3703(a)(20)(A)(iii) [§11.901(10)(A)(iii)]: A few commenters recommend the addition of the words "anesthesia units" after "component codes." One commenter seeks to include reference to "frequency parameters" and "procedure to diagnosis edits" and provides definitions for these terms, as well as "modifier indicators." Another commenter notes that the subclause lists some but not all types of bundling processes and recommends

adding a reference to and a definition of "unit frequency limitations."

Agency Response: The department does not believe that the suggested language is necessary as it has changed the rule to require the provision of all applicable bundling processes. The basic requirement of the rule is to ensure that preferred providers have sufficient information to determine the payment to be made in accordance with the contract, no matter on what basis the parties agree to determine payment.

§3.3703(a)(20)(D) & (a)(21)(B) [§11.901(10) & (11)(B)]: Some commenters indicate that circumstances beyond a carrier's control might make it impossible to comply with the 60-day notice of changes in fees and claims processes, and request an exception for coding changes that are beyond the carrier's control, such as those prescribed by the Centers for Medicare and Medicaid Services (CMS) or the AMA. The commenter notes that CMS issues retroactive coding changes or provides insufficient lead time to meet the requirement. Other commenters believe that retroactive revisions should not be allowed and that mutual agreement between the carrier and preferred provider should be required for any amendments to be effective. Another commenter requests that this provision be changed to 30 days. Another commenter asked for an explanation of how the 60-day notice period in paragraph (D) reconciles with the 90-day compliance period in paragraph (F). Another commenter states that software is developed to check billings and to be responsive to changes in billing practices encountered over time. A 60-day notice period might prevent carriers from catching up to innovative changes in billing practices, which might prove unfair to carriers and cause health care costs to rise.

Agency Response: The department acknowledges the concerns regarding the timing of changes in coding and fee schedules but disagrees that the rule should be changed. Where parties have agreed to use source information outside the control of the carrier as the basis for the carrier's fee computation, the information the rule requires carriers to provide is the identity of the source and the procedure by which the physician or provider may readily access the source. A change to either of those items, or to any factor within the carrier's direct or indirect control, would trigger the 60-day notice requirement. Any change to the source information outside the control of the carrier, however, would not be a change to the carrier's claims payment policies or procedures or to the information required by this rule, and would not require 60 days notice under Article 3.70-3C, §3A(k) and 28 TAC 3.3703(a)(20)(D). However, if the carrier mades a change to a claim processing or payment procedure (such as changing the fee payment from 120% of Medicare to 110%), that would require a 60-day notice in order to be effective. Although the rule does not require a carrier to provide notice of changes made by an outside source, the parties are free to create such a duty by contract, or to agree on effective dates different from those set by the outside source. The department will continue to monitor this practice to determine if future rulemaking is warranted.

§3.3703(a)(20) and (21) [§11.901(10) and (11)]: Some commenters support alternative two as being more reasonable and in line with Attorney General Opinion No. JC-0502. The commenters assert that alternative one seeks information that goes beyond the scope of TDI's statutory authority and the attorney general's opinion. The commenters support the provision of information only on request, as proposed in alternative two, as consistent with their current procedures. Other commenters support TDI's efforts to promulgate rules which assist providers in determining whether reimbursement has been made in accordance with the contract.

Some commenters expressed disagreement with Attorney General Opinion No. JC-0502, concerning TDI's authority to promulgate this rule. The commenters believe that the proposal exceeds TDI's statutory authority.

Agency Response: The department disagrees. The Attorney General concluded that it is within TDI's authority to construe the prompt payment provisions of Arts. 3.70-3C Sec.3A (i) and 20A.18B(i) to promulgate rules to require disclosure of fee schedules and bundling and downcoding policies.

§3.3703(a)(20) [§11.901(10)] - Misuse of Information and Fraud: Some commenters assert that alternative one does not protect carriers from the potential of provider misuse of the disclosed information. The commenters believe that the proposal will result in an increase either in inflated provider charges or fraudulent billing activities by a few providers, causing a financial impact on the health care system. The commenters believe that disclosing coding guidelines to these particular providers will make it easier to submit fraudulent claims. A commenter asserts that disclosure of fee schedules and disclosure of claims review and fraud detection policies are two distinct issues, which should be addressed independently. Fee schedules should be disclosed, but the details of claims review and fraud detection processes should not be disclosed. To counter the possibility of the information being used for fraud, one commenter suggests that the insurer be allowed to provide only a summary description of the bundling and coding policies and, upon written request, an explanation of the methodology of the coding decision on an individual claim.

A commenter recognizes TDI's limited authority over physicians and providers and recommends adding a provision to allow carriers to include a contractual remedy for inappropriate disclosure of the information. Another commenter recommends stringent penalties to ensure that providers do not release proprietary fee schedules and coding guidelines because, without sanctions, there is nothing to prevent or discourage providers from improperly using or disclosing such information. Another commenter points out that neither alternative imposes a requirement on providers to maintain the information they receive from carriers as confidential. The commenter believes that confidentiality should be required, and that carriers should be granted some kind of recourse against providers who breach confidentiality.

Agency Response: The intent of the rule is to ensure that preferred providers are able to determine what they should be paid in accordance with the contract. If a carrier suspects that fraud is occurring it has an obligation to advise the department and other authorities so that action can be taken. Because the Insurance and Penal Codes contain specific provisions concerning fraud, the department declines to include language regarding penalties in this rule. The rule does not prohibit a carrier from including additional remedies for inappropriate disclosure in its provider contracts.

The department disagrees that a provision mandating confidentiality of proprietary information is appropriate for this rule, which merely provides for copyrighted or other proprietary information to be supplied by an alternate means. It is the responsibility of those claiming copyright or other proprietary concerns to assert

this interest to whomever receives the information and to employ confidentiality agreements or other methods to restrict the access to and use of their information. As such, any remedies for violation would also be a matter for the party seeking to protect the information.

§3.3703(a)(20)(A)(ii) [§11.901(10)(A)(ii)]: A commenter recommends deletion of clause (ii) concerning nonstandard codes since HIPAA requires deletion of such codes. Other commenters recommend that the rule reference HIPAA in connection with standard transactions and that language be included allowing the rule to change in accordance with changes in the law. A commenter agrees that if standard coding methodology is not being used, then disclosure may be needed. One commenter says the rule should either specify an inclusive list of adjudication methodologies to be addressed, or disallow nonstandard billing practices. A commenter notes that the terms HCPCS and ICD-9-CM codes are commonly understood, but should still be defined in the rule.

Agency Response: The department has combined subclauses (i) and (ii) and eliminated the term "nonstandard." This change requires disclosure of the coding methodology employed by the carrier and contains no requirement applicable to codes not in use, regardless of the reason. However, the carrier must provide any changes to information affecting payment under the contract. The department disagrees that commonly understood terms that are recognized in the industry should be defined in the rule.

§3.3703(a)(20) [§11.901(10)(A)(v) & (vi)]: A commenter states that the provisions could be interpreted to require more information than intended, including the disclosure of the entire claims processing manual, internal communications, changes in the claims processing system and other internal processes not related to claims payment. The commenter says this would be cumbersome and unnecessary and would disrupt on-going system improvement, innovation and updating. The commenter recommends limiting the requirement to disclosure of claims payment information. Another commenter suggests revising the requirements to focus on claims payment rather than claims processing. The commenter believes that disclosure of claims processing requirements is overly broad and would inundate physicians and providers with highly technical manuals that would be of little value in understanding reimbursement. The commenter suggests deleting the broad phrase "processing of claims" and instead concentrating on disclosure in the context of a claim adjudication inquiry.

Agency Response: The purpose of the rule is to assure that carriers provide sufficient information for a skilled reasonable person to make a determination of the payment to be made under the contract. The department does not intend the rule to place an undue burden on carriers or to inundate preferred providers with unnecessary information. The department tailored the adopted rule to address only those aspects of claims processing that achieve this purpose.

§3.3703(a)(21) [§11.901(11)]: Some commenters recommend that alternative two define terms and require requests to be in writing to avoid disputes as to whether and when a request was made. Some commenters ask that the carrier be given 30 days from the date of its receipt of the written request to provide the information. If Internet access is not allowed, the commenter asks that the request for information be in writing to protect the carrier's proprietary information and validate the requestor's right to receive the information.

Agency Response: The department agrees with commenters' concerns that disputes regarding receipt of requests for the required information should be avoided. A preferred provider may submit a request by e-mail, facsimile or other reasonable and verifiable means in order to receive the required information. Because the department is adopting alternative one, definition of terms for alternative two is not necessary.

§3.3703(a)(20) and (21) [§11.901(10)(F) and (11)(E)] - Effective date: If alternative one is selected, some commenters recommend an extension of the 90-day timeframe for compliance. Specifically, one commenter requests 180 days to comply, while another commenter suggests January 1, 2003. Some commenters request that compliance with alternative two be at least 90 days, with one commenter requesting 180 days, from the effective date of the rule to provide plans sufficient time to revise contracts. Another commenter suggests that plans be given 30 days from the effective date of subparagraph (E) to bring contracts into compliance.

Agency Response: The department acknowledges the possibility that some carriers will need time to develop the procedures necessary to comply. Accordingly, the rule requires a carrier to provide the required information, in existing contracts, to the preferred provider by the later of the 90th day after the effective date of this rule or the 30th day after the date the carrier receives the preferred provider's request. For contracts entered into or renewed after the rule takes effect, beginning on the 90th day after the effective date of the rule, carriers must provide the required information upon request contemporaneously with other contractual materials.

§3.3703(a)(21) [§11.901(11)]: A commenter believes that alternative two allows the physician or provider to request entire fee schedules which will be costly to provide. The commenter asks that a provider be limited to requesting fee schedules for the provider's specialty and a specific number of codes within that specialty. Another commenter asks that the carrier only have to provide the top 25 or 50 CPT codes, based on the provider's practice or specialty, but allow for written requests of any additional CPT codes. Another commenter suggests that alternative two would be more manageable if the ability to request information of the carrier was claim specific.

A commenter states that it would be extremely expensive to require carriers to give every preferred provider a specific summary of benefits tailored to that specific physician or specialty. The commenter also believes it also would not be necessary, because each policy governs payments under the policy and it is only the amount of discount from the provider's fee schedules that determines the level of compensation.

Agency Response: The department does not intend the rule to place an undue burden on carriers or to inundate preferred providers with unnecessary information. Based on comments, the department is adopting a modified version of alternative one, which requires that a carrier provide a fee schedule related only to the services reasonably expected to be provided under the preferred provider's contract with the carrier. A carrier must also provide a toll-free number or electronic address to allow a preferred provider to access information regarding services not included in the fee schedule initially provided. The department understands that there will be expenses involved in providing fee schedules to preferred providers, and addressed this issue in the preamble to the proposed rule. However, in the adopted rule, the department has mitigated the expenses involved by allowing the carrier flexibility to provide the required information by alternative

means, upon request. It is the department's intent that preferred providers receive sufficient information to determine the payment to be made in accordance with their contract. The department disagrees with the last portion of this comment. Due to the nature of the comments received, the department believes that the availability of a fee schedule to preferred providers is necessary.

§3.3703(a)(20)(A)(i)(II) [§11.901(10)(A)(i)(II)]: A commenter inquires as to whether carriers can use existing toll-free numbers.

Agency Response: A carrier may use an existing toll-free number.

§3.3703(a)(20)(A)(i)(II)(v)&(vi) [§11.901(10)(A)(i)(II)(v)&(vi)]: A commenter points out that certain factors are included in the proper payment of claims that do not include valuing the claims or correct coding of the claim. These factors include a medical director determining a claim is not medically necessary or a carrier identifying a pattern of fraudulent billing. The commenter notes that these type of factors are not included in the scope of the rule. A commenter contends that coding requirements are specific to diagnosis, procedure code, severity level, and treatment guidelines, while claims are adjudicated based on the interrelationship of multiple elements, and that compliance with the provision will be difficult. The commenter acknowledges that carriers can provide the name of the software and a summary of the coding guidelines to determine applicability but may not be able to relate each coding factor back to each fee schedule.

A commenter questions how updates to CPT codes and changes to internal systems or processes will be handled. The commenter contends that the requirement is too burdensome and will inhibit ongoing system updates.

Agency Response: It is the department's intent that preferred providers receive sufficient information so that a skilled reasonable person can determine the payment to be made under the terms of the contract. The department recognizes that the commenter's examples of determining medical necessity and identifying fraudulent billing patterns, as well as other factors, may affect the actual amount of reimbursement, but these factors are outside the scope of this rule as well as the statute. The department believes that allowing the information to be distributed electronically and upon request addresses the concerns regarding any potential burden associated with changing the CPT codes or internal systems and processes.

§3.3703(a)(11) & (20)(A)(vii) [§11.901(10)(A)(vii)]: A commenter believes that the use of the phrase "including but not limited to" is ambiguous and requires carriers to guess about the possible existence of other laws that are not specifically cited. The commenter requests deletion of the phrase or the inclusion of the specific citation to all statutes and rules that TDI believes are applicable to the prompt payment of clean claims. Another commenter recommends deletion of clause (vii) as carriers are already required to comply with the provisions of the statute.

Agency Response: The department has deleted clause (vii) as unnecessary since the requirement is already in paragraph (11). A carrier is required to comply with all applicable laws and rules whether or not specified, including Art. 3.70-3C §3A. "Including" is a term of enlargement and not of limitation or exclusive enumeration, and the department has accordingly deleted the phrase "but not limited to."

§3.3703(a)(20)(A)(iii) [§11.901(10)(A)(iii)]: Some commenters want the rule to require carriers to inform the physician or provider of updates to their bundling processes. Another commenter asserts that downcoding of a clean claim is a violation of the prompt pay rules.

Agency Response: The statute as well as the rule require 60 days advance notice of amendments, revisions or substitutions of the required information. The department disagrees with the commenter that downcoding per se of a clean claim is a violation of the prompt pay rules.

§3.3703(a)(20)(B)(ii) and (iii) [§11.901(10)(B)(ii) and (iii)]: A commenter recommends that clauses (ii) and (iii) be combined into (ii). Two commenters recommend the removal of references to Medicaid or Medicare fee schedules because of the potential for confusion.

Agency Response: The department has changed the rule to permit the delivery of the information by any reasonable means upon request from the preferred provider. The department does not agree that the use of Medicaid and Medicare fee schedules as examples creates confusion as these schedules are common benchmarks for compensation in contracts between carriers and preferred providers.

§3.3703(a)(20)(B) [§11.901(10)(B)]: A commenter suggests that if other documents are utilized to convey changes regarding reimbursement provisions, these documents need to be provided to the physician or provider at the time the contract is submitted for initial review rather than at the time of execution of the contract. Another commenter requests that the additional documents be provided at least 60 days before the contract is presented for execution.

Agency Response: Adopted alternative one provides for delivery of required information, regardless of format, upon request from the preferred provider. For contracts entered into or renewed on or after the effective date of these amendments, the carrier must provide the required information contemporaneously with other contractual materials. The department reminds commenters that any amendments, revisions or substitutions to the information are not effective unless the carrier provides at least 60 days written notice.

§3.3703(a)(20)(B)(iii) [§11.901(10)(B)(iii)]: A few commenters suggest that, along with HMOs, delegated networks, delegated entities and delegated third-parties as defined by statute (HB 2828) should be referenced. Some other commenters prefer alternative two over alternative one, but see a fundamental flaw in that neither includes a network entity.

Agency Response: Since the rules apply to HMOs and PPOs, the rules also apply to any entity with which the HMO or PPO has contracted. Note, however, that a carrier remains responsible for compliance regarding a delegated function.

§3.3703(a)(20)(C), (a)(21)(D) [§11.901(10)(C) and (11)(D)]: Some commenters request that the references to copyright laws and licensing agreements be removed because they are inconsistent with HB 610 which provides for the disclosure of claims processing information. These commenters are concerned that a carrier will use these laws or agreements to avoid their disclosure obligations. In the alternative, if the copyright and licensing exclusions are maintained, a commenter requests deleting the words "reasonable" and "training" and make no other changes. The commenter also suggests that any licensing exclusions should only be effective for one year.

Agency Response: The department disagrees that references to copyrighted or other proprietary information should be

deleted. The rule contains sufficient detail to mandate that any entity asserting a copyright or other similar interest must provide the degree of information necessary to inform a preferred provider about fee schedule and coding procedures. The rule does not, however, preclude carriers and preferred providers from engaging in a dialogue concerning the adequacy of any particular piece of information furnished, and the department expects that parties will air and resolve their concerns without the department's involvement. Comments received indicate that some carriers are already providing this information without any problems of this nature. The words "reasonable" and "training," also contained in subparagraph (A), are useful in describing the required level of detail. It would not be appropriate to limit licensing exclusions to only one year, as copyright or other proprietary interests may not be so restricted.

§3.3703(a)(20)(C), (21)(D) [§11.901(10)(C), and (11)(D)]: Some commenters note that the provisions of §3.3703(a)(21) requiring the insurer to provide the name, edition, and model of software may not be sufficient to meet the requirements of the law. The commenters also note that there is no provision in either alternative for reasonable access to or availability of the software.

Some commenters believe that the skilled reasonable person standard conflicts with the portion of the section that requires a summary of the information where a licensing agreement prohibits disclosure of the claims editing software. These commenters note that a carrier could be out of compliance with the reasonable person standard by providing only summary information. A commenter believes that allowing carriers to provide a summary of the bundling and downcoding logic will not provide sufficient information to providers. Another commenter states that the rule does not sufficiently define the required level of detail for the summary a carrier may provide in lieu of violating copyright law or licensing agreements. This standard would make carriers guess as to how much detail is sufficient, and subject them to penalties if it is determined after the fact that the level of detail they provided was not enough.

Agency Response: The department appreciates the commenters' concern that the rule does not guarantee access to any particular software. The department also recognizes that some carriers are subject to licensing agreements. However, a carrier can reveal the function any computer program is intended to perform without violating a licensing agreement. Any other conclusion suggests that the carrier is ceding control of the claims payment process to its software vendor, which is neither likely nor acceptable. A summary is simply a presentation or collection of less than the entire material included in a particular category. Adopted alternative one establishes a standard that the information submitted to the preferred provider, whether or not in summary form, must suffice to enable a skilled reasonable person to determine the payment to be made according to the terms of the contract. A carrier providing this level of detail will be in compliance. The rule allows carriers flexibility to meet this requirement by utilizing means agreeable to both parties.

§§3.3703(a)(20)(D), (a)(21)(B) [§11.1901(10)(D) and (11)(B)]: A commenter suggests defining "routine changes" that would not require the 60-day notice and "material changes" that would require the 60-day notice. According to the commenter, routine changes occur frequently and are accepted as the norm by physicians and providers. These changes typically have a minor impact on the physician or provider. On the other hand, material changes are intended to alter substantially the overall methodology or reimbursement level of the fee schedule.

A commenter objects that the second proposal only requires the provision of notice for "material" changes without any guidance as to what such "material" changes may be.

Agency Response: The department has adopted alternative one, which does not contain the term "material changes." The standard in the rule is that any amendment, revision or substitution of the required information that could make a difference in the amount to be paid under the contract is subject to the 60-day notice requirement in (D). However, as noted in response to a previous comment, any change to the source information outside the control of the carrier, such as an incremental change to a fee schedule or coding guideline, would not be a change to the carrier's claims payment policies or procedures or to the information required by this rule, and would not require 60 days notice under Article 3.70-3C, §3A(k) and 28 TAC §3.3703(a)(20)(D).

§3.3703(a)(20)(D) [§11.901(10)(D)]: Some commenters request inclusion in this subparagraph of a reference to policies and procedures, such as turning an edit off or on or adopting a new policy based on recent FDA approval of a procedure or equipment, as they may have a direct impact on claims payment.

Agency Response: To the extent that policies and procedures affect determination of the payment to be made under the contract, the rule requires carriers to provide this information. However, it is not within the scope of the rule as to whether particular services are covered under the health benefit plan.

§3.3703(a)(20)(F), (a)(21) [§11.901(10)(F)]: A commenter is concerned that the use of the phrase "these amendments" may be confusing and that some carriers may resist renewing or amending existing contracts to avoid disclosure of the required information. The commenter suggests that the language be changed to "this paragraph." Another commenter suggests that the first sentence be deleted to clarify that the requirement for disclosure applies to current contracting preferred providers. A commenter requests that, if alternative two is adopted, the provisions of §3.3703(a)(20)(F) be included in the language of the rule so that the amendments will apply to ongoing contracts as well as contracts entered into after the effective date of the rule.

Agency Response: The rule applies to all carriers as of the effective date of the rule. Contracts entered into or renewed on or after the effective date of this rule must comply with the provisions of paragraph (20). Carriers operating under existing contracts must provide the required information to the preferred provider in accordance with subparagraph (F).

§3.3703(a)(20)(G)(i) [§11.901(10)(G)(i)]: Some commenters suggest that, along with the disclosures mentioned, physicians and providers should be allowed to disclose the information for purposes of legislative or regulatory change, civil actions, or other legal remedies and purposes. Another commenter believes that this subparagraph improperly limits the physician's use of the information to something less than is allowed by law.

Agency Response: The department disagrees. The commenters' concerns are outside the scope of this rule. If, for example, someone were required to produce this information as part of a civil action, other considerations, such as the contract between the parties, private confidentiality agreements, or contractual or civil penalties, would govern disclosure of this information for purposes other than determining the payment to be made under the contract.

§3.3703(a)(20)(G) and (21)(C) [§11.901(10)(G)(i) & (ii) and (11)(C)]: Some commenters believe that the clauses are too broad and may allow the sharing of fee schedules with persons that may not need or have a right to the information, as well as the disclosure of information that should otherwise be treated as confidential. The commenters suggest deleting the phrase "or other business operations" from the clauses. A few commenters suggest limiting the use and disclosure to entities that directly support the provider's billing process. A few commenters request that the department amend both alternatives to allow carriers to immediately terminate contracts with providers who fail to comply with the restrictions on disclosure. Another commenter suggests that alternative two include the specific prohibition from improper disclosure found in alternative one.

A commenter is concerned that as physicians and providers have access to fee schedules, the carriers will lose the ability to negotiate provider discounts for members. The commenter is concerned that this will result in higher premiums, and increase the number of uninsureds as some employers elect to drop coverage due to cost. The commenter says the rule only benefits physicians and providers, not the consumer.

Agency Response: The department agrees that the phrase "other business operations" is overly broad and has deleted the phrase. Regarding the potential effect on discounts, the department understands that implementation of the statute will likely result in preferred providers receiving more information during the contracting process than they currently do; however, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department declines to include language regarding penalties for improper disclosure, but notes that nothing in the rule prohibits a carrier from negotiating a contractual remedy.

§3.3703(a)(20) and (21) [11.901(10) & (11)] - Delegation Issues: A commenter suggests changing the paragraph to only require disclosure of information that is actually governed by the contract since a PPO network would not be able to disclose the payment processes of carriers as they are not privy to that information. One commenter believes that these subsections are premised on the idea that the insurance company determines the fee schedules and fee guidelines. The commenter considers this reasoning flawed and argues that the typical PPO contract is based on fee schedules maintained by the healthcare provider. A commenter does not believe that a PPO or a network entity can provide information that would meet the reasonable person standard set forth in paragraph (20). The commenter explains that because of such factors as covered and non-covered services, deductibles, co-payments, co-insurance, amounts paid for other coverages, it is not possible to provide sufficient information in the contract to allow for all contingencies.

Some commenters offered a reminder that some small- to medium-sized carriers do not contract directly with physicians and healthcare providers, but rather utilize network providers. Thus, the commenter considers it an unreasonable burden to impose on carriers to furnish the fee schedules. The health care provider should be required to furnish the fee schedules to the insurer. Further, the commenter urges that the insurers should only be required to furnish fee schedules where the insurer maintains the schedule and requires the fee schedules to be used for determining compensation.

Agency Response: The department understands there are a variety of contractual arrangements, some involving the participation of delegated entities and delegated third parties who have assumed the responsibility for claims payment. While a carrier may delegate to a delegated entity or delegated third party the duty to provide reimbursement information, the carrier remains ultimately responsible for ensuring that the preferred provider receives the information. The factors referred to in the comment are outside the scope of this rule, as noted in Section 3 of this adoption order.

For: Plastic Eye Surgery Associates, Austin Anesthesiology Group of Texas Physician Providers, HealthSouth Corporation, Metropolitan Surgical Specialties, and various physicians.

For with changes: Texas Medical Association, United Healthcare of Texas, Inc., Texas Hospital Association, Collin/Fannin County Medical Society, M.D. Anderson Cancer Center, Women Partners in OB/GYN, Dallas Orthopaedic Clinic Associated, Harris County Medical Society, Northeast OB/GYN Associates, P.L.L.C., Bexar County Medical Society, Office of Public Insurance Counsel, Seven Oaks Women's Center, Southwest Physician Associates, Tarrant County Medical Society, and American National Insurance Company.

Against: Texas Association of Health Plans, Unicare Life and Health Insurance Company, Unicare Health Plans of Texas, Inc., Unicare Health Insurance Company of Texas, Aetna, Texas Association of Business, HealthSmart, Texas Association of Preferred Provider Organizations, Texas Association of Life and Health Insurers, First Health Group Corp., Alliance of American Insurers, American Association of Health Plans, Golden Rule Insurance Company, Great-West Life & Annuity Insurance Company and One Health Plan of Texas, Humana, Inc., Insurance Council of Texas, Principal Financial Group, and Scott & White Health Plan.

The amendments are adopted under the Insurance Code Art. 3.70-3C, Section 3A and §36.001. Art. 3.70-3C, Section 3A(n) gives the Commissioner the authority to adopt rules as necessary to implement Art. 3.70-3C, Section 3A. Art. 3.70-3C, Section 3A(i) provides that an insurer shall make available to a preferred provider its claim processing policies and procedures. The Commissioner's authority to adopt rules relating to the disclosure of claims payment processes such as fee schedules, bundling processes, and downcoding policies was clarified by Attorney General Opinion No. JC-0502. The opinion states that the Texas Department of Insurance is authorized to promulgate rules to require preferred provider benefit plans and HMOs to disclose their fee schedules, bundling processes, and downcoding policies. 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.

§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must meet the following requirements:

(1) A contract between a preferred provider and an insurer shall not restrict a physician or health care provider from contracting with other insurers, preferred provider plans, preferred provider organizations, or HMOs.

(2) Any term or condition limiting participation on the basis of quality, contained in a contract between a preferred provider and

an insurer, shall be consistent with established standards of care for the profession.

(3) In the case of physicians or practitioners with hospital or institutional provider privileges who provide a significant portion of care in a hospital or institutional provider setting, a contract between a preferred provider and an insurer may contain terms and conditions which include the possession of practice privileges at preferred hospitals or institutions, except that if no preferred hospital or institution offers privileges to members of a class of physicians or practitioners, the contract may not provide that the lack of hospital or institutional provider privileges may be a basis for denial of participation as a preferred provider to such physicians or practitioners of that class.

(4) A contract between an insurer and a hospital or institutional provider shall not, as a condition of staff membership or privileges, require a physician or practitioner to enter into a preferred provider contract.

(5) A contract between a preferred provider and an insurer may provide that the preferred provider will not bill the insured for unnecessary care, if a physician or practitioner panel has determined the care was unnecessary, but the contract shall not require the preferred provider to pay hospital, institutional, laboratory, x-ray, or like charges resulting from the provision of services lawfully ordered by a physician or health care provider, even though such service may be determined to be unnecessary.

(6) A contract between a preferred provider and an insurer shall not:

(A) contain restrictions on the classes of physicians and practitioners who may refer an insured to another physician or practitioner; or

(B) require a referring physician or practitioner to bear the expenses of a referral for specialty care in or out of the preferred provider panel. Savings from cost-effective utilization of health services by contracting physicians or health care providers may be shared with physicians or health care providers in the aggregate.

(7) A contract between a preferred provider and an insurer shall not contain any financial incentives to a physician or a health care provider which act directly or indirectly as an inducement to limit medically necessary services. This subsection does not prohibit the savings from cost-effective utilization of health services by contracting physicians or health care providers from being shared with physicians or health care providers in the aggregate.

(8) A contract between a physician, physicians' group, or practitioner and an insurer shall have a mechanism for the resolution of complaints initiated by an insured, a physician, physicians' group, or practitioner which provides for reasonable due process including, in an advisory role only, a review panel selected by the manner set forth in subsection (b)(2) of §3.3706 of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(9) A contract between a preferred provider and an insurer shall not require any health care provider, physician, or physicians' group to execute hold harmless clauses that shift an insurer's tort liability resulting from acts or omissions of the insurer to the preferred provider.

(10) A contract between a preferred provider and an insurer shall require a preferred provider who is compensated by the insurer on a discounted fee basis to agree to bill the insured only on the discounted fee and not the full charge.

(11) A contract between a preferred provider and an insurer shall require the insurer to comply with all applicable statutes and rules pertaining to prompt payment of clean claims, including Insurance Code Article 3.70-3C §3A (Prompt Payment of Preferred Providers) and §§21.2801-21.2820 of this title (relating to Submission of Clean Claims) with respect to payment to the provider for covered services that are rendered to insureds.

(12) A contract between a preferred provider and an insurer shall require the provider to comply with Insurance Code Article 3.70-3C §4 (Preferred Provider Benefit Plans), which relates to Continuity of Care.

(13) A contract between a preferred provider and an insurer shall not prohibit, penalize, permit retaliation against, or terminate the provider for communicating with any individual listed in Insurance Code Article 3.70-3C §7(c) (Preferred Provider Benefit Plans) about any of the matters set forth therein.

(14) A contract between a preferred provider and an insurer conducting, using, or relying upon economic profiling to terminate physicians or health care providers from a plan shall require the insurer to inform the provider of the insurer's obligation to comply with Insurance Code Article 3.70-3C §3(h) (Preferred Provider Benefit Plans).

(15) A contract between a preferred provider and an insurer that engages in quality assessment shall disclose in the contract all requirements of Insurance Code Article 3.70-3C §3(i) (Preferred Provider Benefit Plans).

(16) A contract between a preferred provider and an insurer shall not require a physician to issue an immunization or vaccination protocol for an immunization or vaccination to be administered to an insured by a pharmacist.

(17) A contract between a preferred provider and an insurer shall not prohibit a pharmacist from administering immunizations or vaccinations if such immunizations or vaccinations are administered in accordance with the Texas Pharmacy Act, Article 4542a-1, Texas Civil Statutes and rules promulgated thereunder.

(18) A contract between a preferred provider and an insurer shall require a provider that voluntarily terminates the contract to provide reasonable notice to the insured, and shall require the insurer to provide assistance to the provider as set forth in Insurance Code Article 3.70-3C §6(e)(2) (Preferred Provider Benefit Plans).

(19) A contract between a preferred provider and an insurer shall require written notice to the provider upon termination by the insurer, and in the case of termination of a physician or practitioner, the notice shall include the provider's right to request a review, as set forth in §3.3706(c) of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(20) A contract between a preferred provider and an insurer must include provisions that will entitle the preferred provider upon request to all information necessary to determine that the preferred provider is being compensated in accordance with the contract. A preferred provider may make the request for information by any reasonable and verifiable means. The information must include a level of detail sufficient to enable a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of the contract for covered services that are rendered to insureds. The insurer may provide the required information by any reasonable method through which the preferred provider can access the information, including e-mail, computer disks, paper or access to an electronic database. Amendments, revisions or substitutions of any information provided pursuant to this

paragraph must be made in accordance with subparagraph (D) of this paragraph. The insurer shall provide the fee schedules and other required information by the later of the 90th day after the effective date of this paragraph or the 30th day after the date the insurer receives the preferred provider's request.

(A) This information must include a preferred provider specific summary and explanation of all payment and reimbursement methodologies that will be used to pay claims submitted by the preferred provider. At a minimum, the information must include:

(i) a fee schedule, including, if applicable, CPT, HCPCS, ICD-9-CM codes and modifiers:

(I) by which all claims for covered services submitted by or on behalf of the preferred provider will be calculated and paid; or

(II) that pertains to the range of health care services reasonably expected to be delivered under the contract by that preferred provider on a routine basis along with a toll-free number or electronic address through which the preferred provider may request the fee schedules applicable to any covered services that the preferred provider intends to provide to an insured and any other information required by this paragraph that pertains to the service for which the fee schedule is being requested if that information has not previously been provided to the preferred provider;

(ii) all applicable coding methodologies;

(iii) all applicable bundling processes;

(iv) all applicable downcoding policies;

(v) a description of any other applicable policy or procedure the insurer may use that affects the payment of specific claims submitted by or on behalf of the preferred provider, including recoupment; and

(vi) any addenda, schedules, exhibits or policies used by the insurer in carrying out the payment of claims submitted by or on behalf of the preferred provider that are necessary to provide a reasonable understanding of the information provided pursuant to this paragraph.

(B) In the case of a reference to source information as the basis for fee computation that is outside the control of the insurer, such as state Medicaid or federal Medicare fee schedules, the information provided by the insurer shall clearly identify the source and explain the procedure by which the preferred provider may readily access the source electronically, telephonically, or as otherwise agreed to by the parties.

(C) Nothing in this paragraph shall be construed to require an insurer to provide specific information that would violate any applicable copyright law or licensing agreement. However, the insurer must supply, in lieu of any information withheld on the basis of copyright law or licensing agreement, a summary of the information that will allow a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of the contract for covered services that are rendered to insureds as required by subparagraph (A) of this paragraph.

(D) No amendment, revision, or substitution of claims payment procedures or any of the information required to be provided by this paragraph shall be effective as to the preferred provider, unless the insurer provides at least 60 calendar days written notice to the preferred provider identifying with specificity the amendment, revision or substitution. Where a contract specifies mutual agreement of the parties as the sole mechanism for requiring amendment, revision or substitution of the information required by this paragraph, the written notice specified in this section does not supersede the requirement for mutual agreement.

(E) Failure to comply with this paragraph constitutes a violation as set forth in subsection (b) of this section.

(F) This paragraph applies to all contracts entered into or renewed on or after the effective date of this paragraph. Upon receipt of a request, the insurer must provide the information required by subparagraphs (A) - (D) of this paragraph:

(i) for contracts entered into or renewed on or after the effective date of this paragraph, to the physician or provider by the later of the 90th day after the effective date of this paragraph or contemporaneously with other contractual materials; or

(ii) for an existing contract that does not contain the terms set forth in this paragraph, to the contracting physician or provider by the later of the 90th day after the effective date of this paragraph or the 30th day after the date the insurer receives the contracting physician's or provider's request.

(G) A physician or provider that receives information under this paragraph:

(i) may not use or disclose the information for any purpose other than the physician's or provider's practice management and billing activities;

(ii) may not use this information to knowingly submit a claim for payment that does not accurately represent the level, type or amount of services that were actually provided to an insured or to misrepresent any aspect of the services; and

(iii) may not rely upon information provided pursuant to this paragraph about a service as a verification that an insured is covered for that service under the terms of the insured's policy or certificate.

(b) In addition to all other contract rights, violations of these rules shall be treated for purposes of complaint and action in accordance with Insurance Code Article 21.21-2, and the provisions of that article shall be utilized insofar as practicable, as it relates to the power of the department, hearings, orders, enforcement, and penalties.

(c) An insurer may enter into an agreement with a preferred provider organization for the purpose of offering a network of preferred providers, provided that it remains the insurer's responsibility to:

(1) meet the requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and this subchapter; or

(2) ensure that the requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and this subchapter are met.

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 18, 2002.

TRD-200206121

Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 8, 2002
Proposal publication date: June 14, 2002
For further information, please call: (512) 463-6327

CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS
SUBCHAPTER J. PHYSICIAN AND PROVIDER CONTRACTS AND ARRANGEMENTS

28 TAC §11.901

The Commissioner of Insurance adopts amendments to §11.901, concerning required contracting provisions for health maintenance organizations (HMOs). The amendments are adopted with changes to the proposed text as published in the June 14, 2002, issue of the *Texas Register* (27 TexReg 5071).

The amendments address the disclosure of certain information concerning fee schedules and coding procedures that affect the payment for services provided by physicians and other health care providers pursuant to a physician or provider contract with an HMO that is subject to Texas Insurance Code Art. 20A.18B. The amendments implement Art. 20A.18B(i), which states that HMOs shall provide contracting physicians and providers with copies of all applicable claim processing policies or procedures. The amendments clarify that an HMO must disclose information concerning fees and coding that affects the payment to be made to a physician or provider for services that the physician or provider has contracted to provide on behalf of an HMO. Lack of contractual access to this information may have prevented some physicians or providers from ascertaining whether they had been compensated according to the terms of their contracts with HMOs. The adopted amendments are designed to address this situation.

The department's proposed rule contained two alternatives, each intended independently to accomplish the stated purpose. Alternative one was contained at §11.901(10) and alternative two was contained at §11.901(11) of the proposed rule. After receiving comments, the department has decided to adopt alternative one, with changes from the proposed version. In response to comments and for clarification, the department has changed §11.901(7), (8), (9), (10), (10)(A), (10)(A)(i)(I) and (II), (ii), (iv), (B), (B)(i) - (iii), (D), (F), (G)(i) and (ii). None of the changes introduce a new subject matter or affect additional persons other than those subject to the proposed rule as originally published.

The amendments to §11.901(7) require that a contract between a physician or provider and an HMO contain terms regarding compliance with all applicable prompt pay statutes and regulations. The adopted alternative, new paragraph (10) to §11.901, requires that upon request from a physician or provider, an HMO must provide physician- or provider-specific information in a level of detail so that a reasonable person with sufficient training, experience and competence in claims processing (skilled reasonable person) can determine the payment to be made according to the terms of the contract. The request may be provided by any reasonable and verifiable means, such as e-mail or facsimile. The information the HMO must provide must include a physician- or provider-specific summary and explanation of all methodologies that will be used to pay claims submitted in accordance with the contract, including a fee schedule, any applicable coding methodologies, bundling processes, downcoding policies, and any other applicable policy or procedure used by the HMO in paying claims for covered services under the contract. The information provided includes physician-specific and provider-specific fee schedules that pertain to the range of health care services reasonably expected to be provided under the contract by that contracting physician or provider. Additionally, the HMO must provide any addendum, schedule, exhibit or policy necessary to provide a reasonable understanding of the information that is being disclosed to the physician or provider. For example, a fee schedule that indicates that the HMO will reimburse certain claims at a usual and customary rate must explain how the HMO will determine the usual and customary rate for a particular service. An HMO may provide any required information using any reasonable method that is accessible by the physician or provider, including e-mail, computer disks, paper or access to an electronic database. If information is held by an outside source and is not within the control of the HMO, such as state Medicaid or federal Medicare fee schedules, the HMO must explain the procedure by which the physician or provider may access the outside source. An HMO that cannot provide any information required by §11.901(10) due to copyright laws or a licensing agreement may supply a summary of the required information. However, the summary must be sufficient to allow the physician or provider to determine the payment to be made under the contract. Any claims payment information required to be provided pursuant to this paragraph may be amended, revised or substituted only upon written notice to the physician or provider at least 60 calendar days prior to the effective date of the amendment, revision or substitution. The requirements added by paragraph (10) apply to all HMOs as of the effective date of these amendments. Upon receipt of a request, the HMO must provide the information by the later of the 90th day after the effective date of the rule or the 30th day after the HMO receives the request. However, for contracts entered into or renewed on or after the effective date of these amendments, the HMO must provide the required information upon request contemporaneously with other contractual materials. Some HMOs commented that they already have procedures established and are currently delivering this information to their physicians and providers. The department acknowledges that fact and expects that the rule's establishment of a timeframe for HMOs that have not yet implemented such procedures will not interrupt this practice.

A physician or provider receiving information pursuant to paragraph (10) may not use or disclose the information for any purpose other than practice management or billing activities. A physician or provider may not use the information to misrepresent the level of services actually performed when submitting a claim under the contract. Information provided pursuant to these amendments about a particular service does not constitute a verification that the service a physician or provider has provided or proposes to provide is a covered benefit for a particular enrollee. Paragraph (10) is not intended to dictate the types of practices, policies or procedures that relate to or affect the claims payment process an HMO may elect to employ. In addition, other plan requirements, including co-payments, co-insurance, or deductibles may also affect the actual amount of reimbursement.

Where applicable, the department has indicated comments received on the comparable Chapter 3 rule, §3.3703, published elsewhere in this issue of the *Texas Register*, by enclosing the reference in brackets.

General

Comment: Some commenters support the proposed rule's first alternative requiring the contract to contain the fee schedule or clear reference to any other appropriate documents. The commenters appreciate the detail and extent to which TDI recognizes that physicians and providers need to be able to completely understand how they will be reimbursed. These commenters do not support alternative two because they believe that the information should not have to be requested since price is an essential element of the contract. Another commenter notes that alternative two leaves some disclosures open for negotiation, but contends that most physicians cannot successfully negotiate the inclusion of these terms because managed care companies will not accept changes to their contracts. A commenter suggests that, if alternative two is adopted, it should contain all of the detail from alternative one (along with the commenter's suggested modifications to same). A commenter suggests that TDI adopt a "hybrid" of alternatives one and two that requires the disclosure of the information, upon request, to minimize unnecessary expenditures and provide access to appropriate information.

Agency Response: The department appreciates the commenters' input on the alternatives. The department recognizes that there are questions concerning the sufficiency of information that carriers are currently providing to physicians and providers. As previously noted, the commissioner has adopted alternative one with changes as a reasonable compromise which preserves the rule's intent yet addresses the commenters' concerns.

Comment: A commenter recommends that, consistent with HB 610, the selected alternative be modified to require carriers to disclose their utilization review policies.

Agency Response: The department believes that the requirements of Art. 20A.18B make the addition of the suggested language unnecessary. The department will continue to monitor this issue to determine if future rulemaking is warranted.

Costs: Some commenters contend that alternative one places an unnecessary and costly burden on carriers to provide information that would have little distinguishable benefit to physicians and providers. These commenters believe that the proposed rule's cost estimates have been underestimated and that the rule will have a detrimental impact on carriers, driving up the costs of health care premiums and adversely affecting the prompt payment of clean claims. Another commenter contends that the costs of complying with alternative one are at least double the costs of complying with alternative two, due to the requirement that carriers mail hundreds of thousands of codes to thousands of physicians. Some commenters note that this mass mailing will result in some physicians and providers receiving inapplicable codes and other information, as well as burdensome documentation. A commenter contends that tailoring the package to individual providers would have a high price tag as well. The commenter claims that the anticipated cost burden from alternative one would include substantial overhaul of health plan contracts, provision of massive amounts of potentially irrelevant information to providers, review of information to assure compliance with the reasonable claims reviewer standard, revision of existing contracts within the 90-day timeframe, and provision of the 60-day notice of changes to the fee and claims review information. A commenter is concerned that alternative one is too prescriptive, and will increase administrative costs and interfere with updating and improvement of the claims payment system. Other commenters believe that the proposal will give providers a competitive advantage in health plan negotiations, and will make information widely available that will gradually erode provider discounts.

Some commenters note that this provision presupposes that a physician or provider is having claims payment issues with all the carriers with which it contracts, which has not been the commenters' experience. The commenters believe it would be punitive to require all carriers to provide the amount of information set forth in the rule when some physicians and providers are satisfied with their relationship with some carriers.

The commenters contend that the second alternative will be less costly and burdensome to administer because it requires the disclosure of the information at the request of the provider. The commenters believe this will enable the carriers to provide information more tailored to the physician's or provider's practice area.

Agency Response: The department appreciates the commenters' concerns regarding the cost and difficulty of implementation. The department does not intend the rule to place an undue burden on carriers or to inundate physicians and providers with unnecessary information. Rather, it is the department's intent that physicians and providers receive sufficient information so that a skilled reasonable person can determine the payment to be made in accordance with the contract. The department believes that the rule as adopted - which allows the information to be distributed electronically or by other means and upon request - is a reasonable compromise which preserves the rule's intent yet addresses the commenters' concerns. Regarding any potentially burdensome overhaul of contracts, the department has modified alternative one so that the required information itself is not set out at length in the contract. The department understands that implementation of the statute will likely result in physicians and providers receiving more information during the contracting process than they currently do; however, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department also believes that some of the comments were based on the incorrect assumption that carriers must provide a comprehensive set of claims processing materials to every contracting physician or provider rather than provider- or specialty-specific materials, as the rule states.

Internet Availability of Information: Some commenters suggest that carriers be permitted to comply with the requirement through an administrative guide, electronic-based communication, or upon request from the physician or provider. The commenters also suggest that the carrier have the option to provide the information in the most cost effective manner. A few commenters suggest allowing the information to be accessed through the Internet by contracted providers utilizing a protected password. The commenters believe that this will reduce costs for the health plan and allow a certain level of security for what is considered proprietary information. Another commenter questions the efficacy of web security to protect confidential information.

A commenter agrees that it is reasonable to require agreed fee schedules to be included in the contracts. However, because there are many different adjudication methodologies in use, their

wide-ranging variety and complexity make it unwieldy to include that information in a contract.

Agency Response: The department agrees with many of these comments and has modified alternative one to allow the information to be distributed upon request and by electronic or other means. The department acknowledges the concerns about web security, but notes that carriers have access to a variety of security measures to protect web-based information. Moreover, the rule allows carriers to provide information in any reasonable format, not just via the web.

§11.901(10)(B)(iv) & (D) [§3.3703(a)(20)(B)(iv) & (D)]: A commenter requests clarification that the proposal does not require existing contracts with physicians or providers to be rewritten. Another commenter recommends deletion of these clauses as burdensome and expensive because they would require a contract amendment every time an internal manual, memo or document is updated. A commenter objects to subparagraph (D) as being too broad, having a significant cost impact, and impeding quality improvement in claims processing systems. A commenter does not believe that the contract should be the main source for reimbursement policy information. The commenter explains that most of its contracts are evergreen, subject to termination notification requirements by either party. The commenter recommends that carriers be permitted the flexibility to adapt, improve and update their administrative processes without requiring amendment of contracts to accommodate internal changes. Some commenters believe that the rule should not pertain to routine process changes but should require notice to physicians and providers of updates to schedules and claims payment software.

Agency Response: The department agrees and has modified alternative one so that the required information itself is not set out at length in the contract. Thus, an existing contract does not need to be rewritten but the required information must be provided to the physician or provider upon request. However, all new or renewed contracts must include the requirements of paragraph (10). The department believes making such materials available electronically will minimize the cost of informing physicians and providers of changes. The department notes that the basic requirement of the rule is to ensure that physicians and providers have sufficient information to determine the payment to be made in accordance with the contract, and this criterion should be used to determine when the 60-day notice is required.

§11.901(10) [§3.3703(a)(20)]: A commenter asserts that providing the voluminous information required by the proposal will slow down the negotiation of contracts, both during the 90-day compliance period and at renewal time each year, which could cause a serious disruption in services.

Agency Response: The department understands that implementation of the statute will likely result in physicians and providers receiving more information during the contracting process than they currently do. However, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department believes that the rule as adopted - which allows the information to be distributed electronically and upon request - is a reasonable compromise which preserves the statute's intent yet addresses the commenters' concerns. A request may be provided by any reasonable and verifiable means, such as e-mail or facsimile. The department expects that parties will negotiate in good faith and on a schedule designed to avoid a disruption of services.

Comment: A commenter notes that the proposal makes more sense for medical professionals than for facilities, as it believes that the American Medical Association (AMA) has a longer and better track record for standardizing treatment codes than does the American Hospital Association (AHA). The commenter advises that listing adjudication methodologies will not benefit facilities that insist upon contracts with a percent discount, as opposed to a per diem, case rate, or DRG basis.

Agency Response: The department appreciates the commenter's concern that some aspects of the rule may affect some physicians and providers differently than others. The purpose of the rule, however, is simply to assure the delivery of sufficient information for a skilled reasonable person to make a determination of the payment to be made under a contract, regardless of the particular fee schedule or billing practice.

§11.901(11) [§3.3703(a)(20)]: Some commenters support alternative two with changes. The commenters recommend a more balanced approach to disclosure that would also require physicians and providers to disclose to carriers a list of their billed charges for treatment and services. The commenters believe that a dual disclosure process is necessary to maintain a balanced negotiation process that is not unduly weighted in favor of one party. The commenters also believe that this approach will be beneficial to consumers.

Agency Response: The department recognizes this concern, but notes that it has limited authority over physicians and providers and suggests that carriers address this issue in their contract negotiations.

§11.901(10)(B) & (C) [§3.3703(a)(20)(B) & (C)]: A commenter recommends adding references to utilization review (UR) criteria because these criteria are used to determine both medical necessity and the level of reimbursement to be paid.

Agency Response: The department declines to make this change as Art. 20A.18B requires only the disclosure of UR policies. However, Insurance Code Art. 21.58A stipulates that providers are entitled to the UR determination of medical necessity for proposed services and sets forth the timetable for notifying the provider of the decision. It further states that the notice of the UR decision must include a description or the source of the screening criteria upon which that decision is based.

§11.901(10)(A) [§3.3703(a)(20)(A)]: A few commenters suggest removing the word "reasonable" before the word "person" because it is redundant in context. Some commenters recommend deleting the word "summary" because the term is inconsistent with the type of detailed information that must be provided.

Agency Response: The department disagrees that the word "reasonable" is redundant. Sufficiency of the information is gauged in part by the recipient, who must be reasonable as well as possess sufficient training, experience, and competence in claims processing. The department is using the reasonable person standard because it is a well established legal benchmark.

As to deletion of "summary," the other requirements the rule places on summaries make the term specific and meaningful as a standard for compliance. So long as a carrier ensures that its summary includes sufficient information to meet the skilled reasonable person standard, it will be in compliance. The rule allows carriers flexibility to meet this requirement by utilizing any reasonable method that is accessible by the physician or provider.

§11.901(10)(C) [§3.3703(a)(20)(C)]: A commenter suggests that the rule mandate that health plan contracts require training certification for provider billing staff.

Agency Response: The department disagrees that this is necessary, although a carrier can provide training for provider billing staff if it desires. The department believes that the skilled reasonable person standard contained in the rule is sufficient to address this concern.

§11.901(10)(A)(i), (i)(II) - (iv) [§3.3703(a)(20)(A)(i), (i)(II) - (iv)]: A commenter recommends that the provisions describing the carrier's fee schedule be expanded to include certain billing codes or code groupings and per diem and case rate payments and that the services that are excluded from the per diem or case rate amounts be identified.

Some commenters recommend the addition of references to standard coding methodologies, utilization review criteria and policies developed or used by the HMOs, and procedures or revenue code groupings that contribute to the determination of case rates or per diem payments. Some commenters also seek definitions for "bundling," "downcoding," "component codes," "standard coding methodology," "nonstandard coding methodology" and "recoupment," as well as the phrase "global service periods, comprehensive codes, component codes and mutually exclusive procedures."Agency

Response: The department disagrees that this is necessary, as the rule makes clear that the carrier has to provide sufficient information so that a person meeting the skilled reasonable person standard can determine the payment to be made under the contract. Although the adopted rule does specify certain methodologies and processes, this is not an exclusive list. "Including" is a term of enlargement and not of limitation or exclusive enumeration. The department has combined subclauses (i) and (ii) to delete reference to "nonstandard." The department does not believe it is necessary to define the remaining terms, as they are widely recognized by the industry.

§11.901(10)(A)(i)(I) [§3.3703(a)(20)(A)(i)(I)]: A commenter recommends inserting the words "to be" before the word "submitted" to clarify that the carrier must disclose all fees related to all possible services the physician or provider may provide. The commenter believes that, as written, this could be interpreted to mean that a carrier must provide only fees associated with codes a physician has previously submitted.

Agency Response: The department disagrees, as it believes that the provisions as written are sufficiently clear to explain that the information to be provided is not limited to only those fees associated with codes a contracting physician or provider has previously submitted. The carrier must provide the fee schedules and applicable codes and modifiers by which all claims for covered services will be calculated. This includes all services contemplated by the contract between the carrier and the physician or provider, regardless of whether claims for any of those services have been previously submitted.

§11.901(10)(A)(i)(II) [§3.3703(a)(20)(A)(i)(II)]: Some commenters suggest replacing the words "may request" with the words "will receive" so that the carrier cannot refuse to provide the fee schedules. A few commenters also suggest adding the phrase "by law" after the word "authorized" to clarify that the law allows for the disclosure of the information as well as clarify that the reference is to any services the physician may legally provide.

Agency Response: With regard to the first comment, the department believes that the adopted rule ensures the physician and provider will receive the information upon request. The department has removed the word "authorized" from the adopted rule and has substituted the language "intends to provide."

§11.901(10)(A)(iii) [§3.3703(a)(20)(A)(iii)]: A few commenters recommend the addition of the words "anesthesia units" after "component codes." One commenter seeks to include reference to "frequency parameters" and "procedure to diagnosis edits" and provides definitions for these terms, as well as "modifier indicators." Another commenter notes that the subclause lists some but not all types of bundling processes and recommends adding a reference to and a definition of "unit frequency limitations."

Agency Response: The department does not believe that the suggested language is necessary as it has changed the rule to require the provision of all applicable bundling processes. The basic requirement of the rule is to ensure that physicians and providers have sufficient information to determine the payment to be made in accordance with the contract, no matter on what basis the parties agree to determine payment.

§11.901(10) & (11)(B) [§3.3703(a)(20)(D), (a)(21)(B)]: Some commenters indicate that circumstances beyond a carrier's control might make it impossible to comply with the 60-day notice of changes in fees and claims processes, and request an exception for coding changes that are beyond the carrier's control, such as those prescribed by the Centers for Medicare and Medicaid Services (CMS) or the AMA. The commenter notes that CMS issues retroactive coding changes or provides insufficient lead time to meet the requirement. Other commenters believe that retroactive revisions should not be allowed and that mutual agreement between the carrier and physician or provider should be required for any amendments to be effective. Another commenter requests that this provision be changed to 30 days. Another commenter asked for an explanation of how the 60-day notice period in paragraph (D) reconciles with the 90-day compliance period in paragraph (F). Another commenter states that software is developed to check billings and to be responsive to changes in billing practices encountered over time. A 60-day notice period might prevent carriers from catching up to innovative changes in billing practices, which might prove unfair to carriers and cause health care costs to rise.

Agency Response: The department acknowledges the concerns regarding the timing of changes in coding and fee schedules but disagrees that the rule should be changed. Where parties have agreed to use source information outside the control of the carrier as the basis for the carrier's fee computation, the information the rule requires carriers to provide is the identity of the source and the procedure by which the physician or provider may readily access the source. A change to either of those items, or to any factor within the carrier's direct or indirect control, would trigger the 60-day notice requirement. Any change to the source information outside the control of the carrier, however, would not be a change to the carrier's claims payment policies or procedures or to the information required by this rule, and would not require 60 days notice under Article 3.70-3C, §3A(k) and 28 TAC 11.901(10)(D). However, if the carrier makes a change to a claim processing or payment procedure (such as changing the fee payment from 120% of Medicare to 110%), that would require a 60-day notice in order to be effective. Although the rule does not require a carrier to provide notice of changes made by an outside source, the parties are free to create such a duty by

contract, or to agree on effective dates different from those set by the outside source. The department will continue to monitor this practice to determine if future rulemaking is warranted.

§11.901(10) and (11) [§3.3703(a)(20) and (21)]: Some commenters support alternative two as being more reasonable and in line with Attorney General Opinion No. JC-0502. The commenters assert that alternative one seeks information that goes beyond the scope of TDI's statutory authority and the attorney general's opinion. The commenters support the provision of information only on request, as proposed in alternative two, as consistent with their current procedures. Other commenters support TDI's efforts to promulgate rules which assist providers in determining whether reimbursement has been made in accordance with the contract.

Some commenters expressed disagreement with Attorney General Opinion No. JC-0502, concerning TDI's authority to promulgate this rule. The commenters believe that the proposal exceeds TDI's statutory authority.

Agency Response: The department disagrees. The Attorney General concluded that it is within TDI's authority to construe the prompt payment provisions of Arts. 3.70-3C Sec.3A (i) and 20A.18B(i) to promulgate rules to require disclosure of fee schedules and bundling and downcoding policies.

§11.901(10) [§3.3703(a)(20)] - Misuse of Information and Fraud: Some commenters assert that alternative one does not protect carriers from the potential of provider misuse of the disclosed information. The commenters believe that the proposal will result in an increase either in inflated provider charges or fraudulent billing activities by a few providers, causing a financial impact on the health care system. The commenters believe that disclosing coding guidelines to these particular providers will make it easier to submit fraudulent claims. A commenter asserts that disclosure of fee schedules and disclosure of claims review and fraud detection policies are two distinct issues, which should be addressed independently. Fee schedules should be disclosed, but the details of claims review and fraud detection processes should not be disclosed. To counter the possibility of the information being used for fraud, one commenter suggests that the carrier be allowed to provide only a summary description of the bundling and coding policies and, upon written request, an explanation of the methodology of the coding decision on an individual claim.

A commenter recognizes TDI's limited authority over physicians and providers and recommends adding a provision to allow carriers to include a contractual remedy for inappropriate disclosure of the information. Another commenter recommends stringent penalties to ensure that providers do not release proprietary fee schedules and coding guidelines because, without sanctions, there is nothing to prevent or discourage providers from improperly using or disclosing such information. Another commenter points out that neither alternative imposes a requirement on providers to maintain the information they receive from carriers as confidential. The commenter believes that confidentiality should be required, and that carriers should be granted some kind of recourse against providers who breach confidentiality.

Agency Response: The intent of the rule is to ensure that physicians and providers are able to determine what they should be paid in accordance with the contract. If a carrier suspects that fraud is occurring, it has an obligation to advise the department and other authorities so that action can be taken. Because the Insurance and Penal Codes contain specific provisions concerning fraud, the department declines to include language regarding penalties in this rule. The rule also does not prohibit a carrier from including additional remedies for inappropriate disclosure in its provider contracts.

The department disagrees that a provision mandating confidentiality of proprietary information is appropriate for this rule, which merely provides for copyrighted or other proprietary information to be supplied by an alternate means. It is the responsibility of those claiming copyright or other proprietary concerns to assert this interest to whomever receives the information and to employ confidentiality agreements or other methods to restrict the access to and use of their information. As such, any remedies for violation would also be a matter for the party seeking to protect the information.

§11.901(10)(A)(ii) [§3.3703(a)(20)(A)(ii)]: A commenter recommends deletion of clause (ii) concerning nonstandard codes since HIPAA requires deletion of such codes. Other commenters recommend that the rule reference HIPAA in connection with standard transactions and that language be included allowing the rule to change in accordance with changes in the law. A commenter agrees that if standard coding methodology is not being used, then disclosure may be needed. One commenter says the rule should either specify an inclusive list of adjudication methodologies to be addressed, or disallow nonstandard billing practices. A commenter notes that the terms HCPCS and ICD-9-CM codes are commonly understood, but should still be defined in the rule.

Agency Response: The department has combined subclauses (i) and (ii) and eliminated the term "nonstandard." This change requires disclosure of the coding methodology employed by the carrier and contains no requirement applicable to codes not in use, regardless of the reason. However, the carrier must provide any changes to information affecting payment under the contract. The department disagrees that commonly understood terms that are recognized in the industry should be defined in the rule.

§11.901(10)(A)(v) & (vi) [§3.3703(a)(20)]: A commenter states that the provisions could be interpreted to require more information than intended, including the disclosure of the entire claims processing manual, internal communications, changes in the claims processing system and other internal processes not related to claims payment. The commenter says this would be cumbersome and unnecessary and would disrupt on-going system improvement, innovation and updating. The commenter recommends limiting the requirement to disclosure of claims payment information. Another commenter suggests revising the requirements to focus on claims payment rather than claims processing. The commenter believes that disclosure of claims processing requirements is overly broad and would inundate physicians and providers with highly technical manuals that would be of little value in understanding reimbursement. The commenter suggests deleting the broad phrase "processing of claims" and instead concentrating on disclosure in the context of a claim adjudication inquiry.

Agency Response: The purpose of the rule is to assure the delivery of sufficient information for a skilled reasonable person to make a determination of the payment to be made under the contract. The department does not intend the rule to place an undue burden on carriers or to inundate preferred providers with unnecessary information. The department tailored the adopted rule to address only those aspects of claims processing that achieve this purpose.

§11.901(11) [§3.3703(a)(21)]: Some commenters recommend that alternative two define terms and require requests to be in writing to avoid disputes as to whether and when a request was made. Some commenters ask that the carrier be given 30 days from the date of its receipt of the written request to provide the information. If Internet access is not allowed, the commenter asks that the request for information be in writing to protect the carrier's proprietary information and validate the requestor's right to receive the information.

Agency Response: The department agrees with commenters' concerns that disputes regarding receipt of requests for the required information should be avoided. A physician or provider may submit a request by e-mail, facsimile or other reasonable and verifiable means in order to receive the required information. Because the department is adopting alternative one, definition of terms for alternative two is not necessary.

§11.901(10)(F) and (11)(E) [§3.3703(a)(20)(F) and (21)(E)] - Effective date: If alternative one is selected, some commenters recommend an extension of the 90-day time frame for compliance. Specifically, one commenter requests 180 days to comply, while another commenter suggests January 1, 2003. Some commenters request that compliance with alternative two be at least 90 days, with one commenter requesting 180 days, from the effective date of the rule to provide carriers sufficient time to revise contracts. On subparagraph (E), a commenter suggests that carriers be given 30 days from the effective date to bring contracts into compliance.

Agency Response: The department acknowledges the possibility that some carriers will need time to develop the procedures necessary to comply. Accordingly, the rule requires a carrier to provide the required information, in existing contracts, to the physician and provider on the later of the 90th day after the effective date of this rule or the 30th day after the date the carrier receives the physician's and provider's request. For contracts entered into or renewed after the rule takes effect, beginning on the 90th day after the effective date of the rule, carriers must provide the required information upon request contemporaneously with other contractual materials.

§11.901(11) [§3.3703(a)(21)]: A commenter believes that alternative two allows the physician or provider to request entire fee schedules, which will be costly to provide. The commenter asks that providers be limited to requesting fee schedules for the providers' specialty and a specific number of codes within that specialty. Another commenter asks that the carrier only have to provide the top 25 or 50 CPT codes, based on the provider's practice or specialty, but allow for written requests of any additional CPT codes. Another commenter suggests that alternative two would be more manageable if the ability to request information of the carrier was claim specific.

A commenter states that it would be extremely expensive to require carriers to give every physician and provider a specific summary of benefits tailored to that specific physician or specialty. The commenter believes it also would not be necessary, because each policy governs payments under the policy and it is only the amount of discount from the providers' fee schedules that determines the level of compensation.

Agency Response: The department does not intend the rule to place an undue burden on carriers or to inundate physicians and providers with unnecessary information. Based on comments, the department is adopting a modified version of alternative one, which requires that a carrier provide a fee schedule related only to the services reasonably expected to be provided under the physician's and provider's contract with the carrier. A carrier must also provide a toll-free number or electronic address to allow a physician and provider to access information regarding services not included in the fee schedule initially provided. The department acknowledges that there will be expenses involved in providing fee schedules to physicians and providers, and addressed this issue in the preamble to the proposed rule. However, in the adopted rule, the department has mitigated the expenses involved by allowing the carrier flexibility to provide the required information by alternative means and only upon request. It is the department's intent that physicians and providers receive sufficient information for a skilled reasonable person to determine the payment to be made in accordance with their contract. The department disagrees with the last portion of this comment. Due to the nature of the complaints received, the department believes that the availability of a fee schedule to physicians and providers is necessary.

§11.901(10)(A)(i)(II) [§3.3703(a)(20)(A)(i)(II)]: A commenter inquires whether carriers can use existing toll-free numbers.

Agency Response: Carriers may use an existing toll-free number.

§11.901(10)(A)(i)(II), (v) & (vi) [§3.3703(a)(20)(A)(i)(II), (v) & (vi)]: A commenter points out that certain factors are included in the proper payment of claims that do not include valuing the claims or correct coding of the claim. These factors include a medical director determining a claim is not medically necessary or a carrier identifying a pattern of fraudulent billing. The commenter notes that these type of factors are not included in the scope of the rule. A commenter contends that coding requirements are specific to diagnosis, procedure code, severity level, and treatment guidelines, while claims are adjudicated based on the interrelationship of multiple elements, and that compliance with the provision will be difficult. The commenter acknowledges that carriers can provide the name of the software and a summary of the coding guidelines to determine applicability but may not be able to relate each coding factor back to each fee schedule.

A commenter questions how updates to CPT codes and changes to internal systems or processes will be handled. The commenter contends that the requirement is too burdensome and will inhibit ongoing system updates.

Agency Response: It is the department's intent that physicians and providers receive sufficient information so that a skilled reasonable person can determine the payment to be made under the terms of the contract. The department recognizes that the commenter's examples of determining medical necessity and identifying fraudulent billing patterns, as well as other factors, may affect the actual amount of reimbursement, but these factors are outside the scope of this rule as well as the statute. The department believes that allowing the information to be distributed electronically and upon request addresses the concerns regarding any potential burden associated with changing the CPT codes or internal systems and processes.

§11.901(10)(A)(vii) [§3.3703(a)(11) & (20)(A)(vii)]: A commenter believes that the use of the phrase "including but not limited to" is ambiguous and requires carriers to guess about the possible existence of other laws that are not specifically cited. The commenter requests deletion of the phrase or the inclusion of the specific citation to all statutes and rules that TDI believes are applicable to the prompt payment of clean claims. Another

commenter recommends deletion of clause (vii) as carriers are already required to comply with the provisions of Art. 20A.18B.

Agency Response: The department has deleted clause (vii) as unnecessary since the requirement is already in paragraph (7). A carrier is required to comply with all applicable laws and rules whether or not specified, including Art. 20A.18B. "Including" is a term of enlargement and not of limitation or exclusive enumeration, and the department has accordingly deleted the phrase "but not limited to."

§11.901(10)(B)(iii): A commenter suggests changing the last part of the clause to "...access the source as referenced by the health plan."

Agency Response: The department does not believe the addition of this language is necessary and declines to make the change. The provision already states that the contract must identify and explain the procedure by which the physician or provider can readily access the source.

§11.901(10)(A)(iii) [§3.3703(a)(20)(A)(iii)]: Some commenters want the rule to require carriers to inform the physician or provider of updates to their bundling processes. Another commenter asserts that downcoding of a clean claim is a violation of the prompt pay rules.

Agency Response: The statute as well as the rule require 60 days advance notice of amendments, revisions or substitutions of the required information. The department disagrees with the commenter that downcoding per se of a clean claim is a violation of the prompt pay rules.

§11.901(10)(B)(ii) and (iii) [§3.3703(a)(20)(B)(ii) and (iii)]: A commenter recommends that clauses (ii) and (iii) be combined into (ii). Two commenters recommend the removal of references to Medicaid or Medicare fee schedules because of the potential for confusion.

Agency Response: The department has changed the rule to permit the delivery of the information by any reasonable means upon request from the physician or provider. The department does not agree that the use of Medicaid and Medicare fee schedules as examples creates confusion as those schedules are common benchmarks for compensation in contracts between carriers and physicians or providers.

§11.901(10)(B) [§3.3703(a)(20)(B)]: A commenter suggests that if other documents are utilized to convey changes regarding reimbursement provisions, these documents need to be provided to the physician or provider at the time the contract is submitted for initial review rather than at the time of execution of the contract. Another commenter requests that the additional documents be provided at least 60 days before the contract is presented for execution.

Agency Response: Adopted alternative one provides for delivery of required information, including references to outside sources, upon request from the physician or provider. For contracts entered into or renewed on or after the effective date of these amendments, the carrier must provide the required information contemporaneously with other contractual materials. The department reminds commenters that any amendments, revisions or substitutions to the information are not effective unless the carrier provides at least 60 days written notice.

§11.901(10)(B)(iii) [§3.3703(a)(20)(B)(iii)]: A few commenters suggest that, along with HMOs, delegated networks, delegated entities and delegated third parties as defined by statute (HB 2828) should be referenced. Some other commenters prefer alternative two over alternative one, but see a fundamental flaw in that neither includes a network entity.

Agency Response: Since the rules apply to HMOs and PPOs, the rules also apply to any entity with which the HMO or PPO has contracted. Note, however, that a carrier remains responsible for compliance regarding a delegated function.

§11.901(10)(C) and (11)(D) [§3.3703(a)(20)(C), (a)(21)(D)]: Some commenters request that the references to copyright laws and licensing agreements be removed because they are inconsistent with HB 610 which provides for the disclosure of claims processing information. These commenters are concerned that a carrier will use these laws or agreements to avoid their disclosure obligations. In the alternative, if the copyright and licensing exclusions are maintained, a commenter requests deleting the words "reasonable" and "training," and make no other changes. The commenter also suggests that any licensing exclusions should only be effective for one year.

Agency Response: The department disagrees that references to copyrighted or other proprietary information should be deleted. The rule contains sufficient detail to mandate that any entity asserting a copyright or other similar interest must provide the degree of information necessary to inform a physician or provider about fee schedules and coding procedures. The rule does not, however, preclude carriers and physicians or providers from engaging in a dialogue concerning the adequacy of any particular piece of information furnished, and the department expects that parties will air and resolve their concerns without the department's involvement. Comments received indicate that some carriers are already providing this information without any problems of this nature. The words "reasonable" and "training," also contained in subparagraph (A), are useful in describing the required level of detail. It would not be appropriate to limit licensing exclusions to only one year, as copyright or other proprietary interests may not be so restricted.

§11.901(10)(C) and (11)(D) [§3.3703(a)(20)(C), (21)(D)]: Some commenters note that the provisions of §11.901(11) requiring the carrier to provide the name, edition, and model of software may not be sufficient to meet the requirements of the law. The commenters also note that there is no provision in either alternative for reasonable access to or availability of the software.

Some commenters believe that the skilled reasonable person standard conflicts with the portion of the section that requires a summary of the information where a licensing agreement prohibits disclosure of the claims editing software. These commenters note that a carrier could be out of compliance with the reasonable person standard by providing only summary information. A commenter believes that allowing carriers to provide a summary of the bundling and downcoding logic will not provide sufficient information to providers. Another commenter states that the rule does not sufficiently define the required level of detail for the summary a carrier may provide in lieu of violating copyright law or licensing agreements. This standard would make carriers guess as to how much detail is sufficient, and subject them to penalties if it is determined after the fact that the level of detail they provided was not enough.

Agency Response: The department appreciates the commenters' concern that the rule does not guarantee access to any particular software. The department also recognizes that some carriers are subject to licensing agreements. However, a carrier can reveal the function any computer program is intended

to perform without violating a licensing agreement. Any other conclusion suggests that the carrier is ceding control of the claims payment process to its software vendor, which is neither likely nor acceptable. A summary is simply a presentation or collection of less than the entire material included in a particular category. Adopted alternative one establishes a standard that the information submitted to the physician and provider, whether or not in summary form, must suffice to enable a skilled reasonable person to determine the payment to be made according to the terms of the contract. A carrier providing this level of detail will be in compliance. The rule allows carriers flexibility to meet this requirement by utilizing means agreeable to both parties.

§11.1901(10)(D) and (11)(B) [§3.3703(a)(20)(D), (a)(21)(B)]: A commenter suggests defining "routine changes" that would not require the 60-day notice and "material changes" that would require the 60-day notice. According to the commenter, routine changes occur frequently and are accepted as the norm by physicians and providers. These changes typically have a minor impact on the physician or provider. On the other hand, material changes are intended to alter substantially the overall methodology or reimbursement level of the fee schedule.

A commenter objects that alternative two only requires the provision of notice for "material" changes without any guidance as to what such "material" changes may be.

Agency Response: The department has adopted alternative one, which does not contain the term "material changes." The standard in the rule is that any amendment, revision or substitution of the required information that could make a difference in the payment to be made under the contract is subject to the 60-day notice requirement in (D). However, as noted in response to a previous comment, any change to the source information outside the control of the carrier, such as an incremental change to a fee schedule or coding guideline, would not be a change to the carrier's claims payment policies or procedures or to the information required by this rule, and would not require 60 days notice under Article 3.70-3C, §3A(k) and 28 TAC §11.901(10)(D).

§11.901(10)(D) [§3.3703(a)(20)(D)]: Some commenters request inclusion in this subparagraph of a reference to policies and procedures, such as turning an edit off or on or adopting a new policy based on recent FDA approval of a procedure or equipment, as they may have a direct impact on claims payment.

Agency Response: To the extent that policies and procedures affect determination of the payment to be made under the contract, the rule requires carriers to provide this information. However, it is not within the scope of the rule as to whether particular services are covered under the health benefit plan.

§11.901(10)(F) [§3.3703(a)(20)(F), (a)(21)]: A commenter is concerned that the use of the phrase "these amendments" may be confusing and that some carriers may resist renewing or amending existing contracts to avoid disclosure of the required information. The commenter suggests that the language be changed to "this paragraph." Another commenter suggests that the first sentence be deleted to clarify that the requirement for disclosure applies to currently contracted physicians. A commenter requests that, if alternative two is adopted, the provisions of §11.901(10)(F) be included in the language of the rule so that the amendments will apply to ongoing contracts as well as contracts entered into after the effective date of the rule.

Agency Response: The rule applies to all carriers as of the effective date of the rule. Contracts entered into or renewed on or after the effective date of this rule must comply with the provisions of paragraph (10). HMOs operating under existing contracts must provide the required information to the physician or provider in accordance with subparagraph (F).

§11.901(10)(G)(i) [§3.3703(a)(20)(G)(i)]: Some commenters suggest that, along with the disclosures mentioned, physicians and providers should be allowed to disclose the information for purposes of legislative or regulatory change, civil actions, or other legal remedies and purposes. Another commenter believes that this subparagraph improperly limits the physician's use of the information to something less than is allowed by law.

Agency Response: The department disagrees. The commenters' concerns are outside the scope of this rule. If, for example, someone were required to produce this information as part of a civil action, other considerations, such as the contract between the parties, private confidentiality agreements, contractual or civil penalties, would govern disclosure of this information for purposes other than determining the payment to be made under the contract.

§11.901(10)(G)(i) & (ii) and (11)(C) [§3.3703(a)(20)(G) and (21)(C)]: Some commenters believe that the clauses are too broad and may allow the sharing of fee schedules with persons that may not need or have a right to the information, as well as the disclosure of information that should otherwise be treated as confidential. The commenters suggest deleting the phrase "or other business operations" from the clauses. A few commenters suggest limiting the use and disclosure to entities that directly support the provider's billing process. A few commenters request that the department amend both alternatives to allow carriers to immediately terminate contracts with providers who fail to comply with the restrictions on disclosure. Another commenter suggests that alternative two include the specific prohibition from improper disclosure found in alternative one.

A commenter is concerned that as physicians and providers have access to fee schedules, the carriers will lose the ability to negotiate provider discounts for members. The commenter is concerned that this will result in higher premiums, and increase the number of uninsureds as some employers elect to drop coverage due to cost. The commenter says the rule only benefits physicians and providers, not the consumer.

Agency Response: The department agrees that "other business operations" is overly broad and has deleted the phrase. Regarding the potential effect on discounts, the department understands that implementation of the statute will likely result in physicians and providers receiving more information during the contracting process than they currently do; however, the statute requires full disclosure of a carrier's claims payment policies and procedures. The department declines to include language regarding penalties for improper disclosure, but notes that nothing in the rule prohibits a carrier from negotiating a contractual remedy.

§11.901(10) & (11) [§3.3703(a)(20) and (21)] - Delegation Issues: A commenter suggests changing the paragraph to only require disclosure of information that is actually governed by the contract since a PPO network would not be able to disclose the payment processes of carriers as they are not privy to that information. One commenter believes that these subsections are premised on the idea that the insurance company determines the fee schedules and fee guidelines. The commenter considers this reasoning flawed and argues that the typical PPO contract is based on fee schedules maintained by the healthcare provider. A commenter does not believe that a PPO or a network entity can

provide information that would meet the reasonable person standard set forth in paragraph (20). The commenter explains that because of such factors as covered and non-covered services, deductibles, co-payments, co-insurance, amounts paid for other coverages, it is not possible to provide sufficient information in the contract to allow for all contingencies.

Some commenters offered a reminder that some small- to medium-sized carriers do not contract directly with physicians and healthcare providers, but rather utilize network providers. Thus, the commenter considers it an unreasonable burden to impose on carriers to furnish the fee schedules. The health care provider should be required to furnish the fee schedules to the insurer. Further, the commenter urges that the insurers should only be required to furnish fee schedules where the insurer maintains the schedule and requires the fee schedules to be used for determining compensation.

Agency Response: Although comments on this delegation issue were only received in reference to §3.3703, the department recognizes that this issue is applicable to §11.901 and HMOs. The department understands there are a variety of contractual arrangements, some involving the participation of delegated entities and delegated third parties who have assumed the responsibility for claims payment. While an HMO may delegate to a delegated entity or delegated third party the duty to provide reimbursement information, the HMO remains ultimately responsible for ensuring that its contracted delegated entities provide the information set out in this rule to their contracting physicians and providers. The factors referred to in the comment are outside the scope of this rule, as noted in Section 3 of this adoption order.

For: Plastic Eye Surgery Associates, Austin Anesthesiology Group of Texas Physician Providers, HealthSouth Corporation, Metropolitan Surgical Specialties, and various physicians.

For with changes: Texas Medical Association, United Healthcare of Texas, Inc., Texas Hospital Association, Collin/Fannin County Medical Society, M.D. Anderson Cancer Center, Women Partners in OB/GYN, Dallas Orthopaedic Clinic Associated, Harris County Medical Society, Northeast OB/GYN Associates, P.L.L.C., Bexar County Medical Society, Office of Public Insurance Counsel, Seven Oaks Women's Center, Southwest Physician Associates, Tarrant County Medical Society, and American National Insurance Company.

Against: Texas Association of Health Plans, Unicare Life and Health Insurance Company, Unicare Health Plans of Texas, Inc., Unicare Health Insurance Company of Texas, Aetna, Texas Association of Business, HealthSmart, Texas Association of Preferred Provider Organizations, Texas Association of Life and Health Insurers, First Health Group Corp., Alliance of American Insurers, American Association of Health Plans, Golden Rule Insurance Company, Great-West Life & Annuity Insurance Company and One Health Plan of Texas, Humana, Inc., Insurance Council of Texas, Principal Financial Group, and Scott & White Health Plan.

The amendments are adopted under the Insurance Code Article 20A.18B and §36.001. Article 20A.18B(o) gives the Commissioner the authority to adopt rules as necessary to implement Article 20A.18B. Article 20A.18B(i) provides that an HMO shall make available to a contracting physician or provider its claims processing policies and procedures. The Commissioner's authority to adopt rules relating to the disclosure of claims payment processes such as fee schedules, bundling processes, and downcoding policies was clarified by Attorney General Opinion No. JC-0502. The opinion states that the Texas Department of Insurance is authorized to promulgate rules to require preferred provider benefit plans and HMOs to disclose their fee schedules, bundling processes, and downcoding policies. 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.

§11.901. Required Provisions.

Physician and provider contracts and arrangements shall include the following provisions:

(1) regarding hold harmless clause as described in the Insurance Code Article 20A.18A(g) and §11.1102 of this title (relating to Hold Harmless Clause);

(2) regarding retaliation as described in the Insurance Code Article 20A.14(k);

(3) regarding continuity of treatment, if applicable, as described in the Insurance Code Article 20A.18(A)(c);

(4) regarding written notification of termination to a physician or provider at least 90 days prior to the effective date of the termination of the physician or provider, except in the case of imminent harm to patient health, action against license to practice, or fraud pursuant to Insurance Code Article 20A.18A(b), in which case termination may be immediate. Upon written notification of termination, a physician or provider may seek review of the termination within a period not to exceed 60 days, pursuant to the procedure set forth in the Insurance Code Article 20A.18A(b). The HMO must provide notification of the termination of a physician or provider to its enrollees receiving care from the provider being terminated at least 30 days before the effective date of the termination. Notification of termination of a physician or provider to enrollees for reasons related to imminent harm may be given to enrollees immediately;

(5) regarding posting of complaints notice in physician/provider offices as described in the Insurance Code Article 20A.18A(i). A representative notice that complies with this requirement may be obtained from the Texas Department of Insurance, HMO/UR/QA Group, P.O. Box 149104, Austin, Texas 78714-9104;

(6) regarding indemnification of the HMO as described in the Insurance Code Article 20A.18A(f);

(7) regarding prompt payment of claims as described in the Insurance Code Article 20A.09(j) and all applicable statutes and rules pertaining to prompt payment of clean claims, including Insurance Code Article 20A.18B (Prompt Payment of Physician and Providers) and §§21.2801-21.2820 of this title (relating to Submission of Clean Claims) with respect to the payment to the physician or provider for covered services that are rendered to enrollees;

(8) regarding capitation, if applicable, as described in the Insurance Code Article 20A.18A(e);

(9) regarding selection of a primary physician or provider, if applicable, as described in the Insurance Code Article 20A.18A(e); and

(10) entitling the physician or provider upon request to all information necessary to determine that the physician or provider is being compensated in accordance with the contract. A physician or provider may make the request for information by any reasonable and verifiable means. The information must include a level of detail sufficient to enable a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of the contract for covered services that are rendered to enrollees. The HMO may provide the required information

by any reasonable method through which the physician or provider can access the information, including e-mail, computer disks, paper or access to an electronic database. Amendments, revisions or substitutions of any information provided pursuant to this paragraph must be made in accordance with subparagraph (D) of this paragraph. The HMO shall provide the fee schedules and other required information by the later of the 90th day after the effective date of this paragraph or the 30th day after the date the HMO receives the physician's or provider's request.

(A) This information must include a physician-specific or provider-specific summary and explanation of all payment and reimbursement methodologies that will be used to pay claims submitted by a physician or provider. At a minimum, the information must include:

(i) a fee schedule, including, if applicable, CPT, HCPCS, ICD-9-CM codes and modifiers:

(I) by which all claims for covered services submitted by or on behalf of the contracting physician or provider will be calculated and paid; or

(II) that pertains to the range of health care services reasonably expected to be delivered under the contract by that contracting physician or provider on a routine basis along with a toll-free number or electronic address through which the contracting physician or provider may request the fee schedules applicable to any covered services that the physician or provider intends to provide to an enrollee and any other information required by this paragraph, that pertains to the service for which the fee schedule is being requested if that information has not previously been provided to the physician or provider;

(ii) all applicable coding methodologies;

(iii) all applicable bundling processes;

(iv) all applicable downcoding policies;

(v) a description of any other applicable policy or procedure the HMO may use that affects the payment of specific claims submitted by or on behalf of the contracting physician or provider, including recoupment; and

(vi) any addenda, schedules, exhibits or policies used by the HMO in carrying out the payment of claims submitted by or on behalf of the contracting physician or provider that are necessary to provide a reasonable understanding of the information provided pursuant to this paragraph.

(B) In the case of a reference to source information as the basis for fee computation that is outside the control of the HMO, such as state Medicaid or federal Medicare fee schedules, the information provided by the HMO shall clearly identify the source and explain the procedure by which the physician or provider may readily access the source electronically, telephonically, or as otherwise agreed to by the parties.

(C) Nothing in this paragraph shall be construed to require an HMO to provide specific information that would violate any applicable copyright law or licensing agreement. However, the HMO must supply, in lieu of any information withheld on the basis of copyright law or licensing agreement, a summary of the information that will allow a reasonable person with sufficient training, experience and competence in claims processing to determine the payment to be made according to the terms of the contract for covered services that are rendered to enrollees as required by subparagraph (A) of this paragraph.

(D) No amendment, revision, or substitution of any of the claims payment procedures or any of the information required to be provided by this paragraph shall be effective as to the contracting physician or provider, unless the HMO provides at least 60 calendar days written notice to the contracting physician or provider identifying with specificity the amendment, revision or substitution. Where a contract specifies mutual agreement of the parties as the sole mechanism for requiring amendment, revision or substitution of the information required by this paragraph, the written notice specified in this section does not supersede the requirement for mutual agreement.

(E) Failure to comply with this paragraph constitutes a violation of Insurance Code Chapter 20A (Texas Health Maintenance Organization Act).

(F) This paragraph applies to all contracts entered into or renewed on or after the effective date of this paragraph. Upon receipt of a request, the HMO must provide the information required by subparagraphs (A) - (D) of this paragraph:

(i) for contracts entered into or renewed on or after the effective date of this paragraph, to the physician or provider by the later of the 90th day after the effective date of this paragraph or contemporaneously with other contractual materials; or

(ii) for an existing contract that does not contain the terms set forth in this paragraph, to the contracting physician or provider by the later of the 90th day after the effective date of this paragraph or the 30th day after the date the insurer receives the contracting physician's or provider's request.

(G) A physician or provider that receives information under this paragraph:

(i) may not use or disclose the information for any purpose other than the physician's or provider's practice management and billing activities;

(ii) may not use this information to knowingly submit a claim for payment that does not accurately represent the level, type or amount of services that were actually provided to an enrollee or to misrepresent any aspect of the services; and

(iii) may not rely upon information provided pursuant to this paragraph about a service as a verification that an enrollee is covered for that service under the terms of the enrollee's evidence of coverage.

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 18, 2002.

TRD-200206120
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 8, 2002
Proposal publication date: June 14, 2002
For further information, please call: (512) 463-6327

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 109. WORKERS' COMPENSATION COVERAGE FOR STATE EMPLOYEES

28 TAC §109.1

The Texas Workers' Compensation Commission (the commission) adopts amendments to §109.1, concerning State Agencies: General Provisions, without changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7040).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order, which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and if the commission disagrees, the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the rule as proposed.

The amendments establish the state agency that is responsible for the administration of the government employees workers' compensation insurance and the state risk management programs. Texas Labor Code §412.001 establishes the State Office of Risk Management (SORM) to administer these programs while concurrently removing them from the Attorney General's Office and the commission, respectively.

Subsection (b) replaces reference to "the Workers' Compensation Division of the Attorney General's Office" with "the State Office of Risk Management." Subsection (c) was deleted and replaced with language requiring each state agency to provide to the commission a single administrative address for the purpose of administering workers' compensation claims, in the form and manner prescribed by the commission.

No comments were received regarding the proposed amendments to §109.1.

The amendments are adopted under the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §412.011, which establishes the Office of Risk Management as the administrator of insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs; the Texas Labor Code, §501.001, which contains definitions of terms used in Chapter 501; the Texas Labor Code §501.002, which lists the chapters and sections of the Texas Labor Code which are applicable to state agencies and establishes each individual state agency as the employer for workers' compensation purposes; the Texas Labor Code, §501.021, which established workers' compensation coverage for state employees; the Texas Labor Code, §501.023, which establishes the state as a self-insuring entity for compensable injuries that occurred prior to September 1, 1997; and the Texas Labor Code, §501.024, which sets out the exclusions from coverage.

The amendments are adopted under: the Texas Labor Code §§402.061, 412.011, 501.001, 501.002, 501.021, 501.023, and 501.024.

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 19, 2002.

TRD-200206137
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: October 9, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 804-4287

♦ ♦ ♦

CHAPTER 164. HAZARDOUS EMPLOYER PROGRAM

28 TAC §164.9

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §164.9 without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7044).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and if the commission disagrees, the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the rule as proposed.

Subsection (e) previously required approved professional sources to attend an update seminar prior to December 31 of each year. This requirement was instituted during a period of rapid change in the hazardous employer program. Since the program has not undergone substantive changes for several years, the "update seminar" has become more refresher training than presentation of new information.

After changes to Chapter 164 rules went into effect in January 1999, private employers were no longer required to obtain a safety consultation from an approved professional source. This drastically reduced the number of consultations required under the program and, thus, the amount of work for approved professional sources. Many approved professional sources live outside of Texas and must travel to the update seminars each year to maintain their designation.

The adopted change relaxes a requirement on approved professional sources that has become unnecessarily stringent. In addition, the change allows approved professional sources to obtain required training on the Internet when this becomes available.

Comments supporting the proposed amendment to §164.9 were received from the following group: Texas Mutual Insurance Company.

Summaries of the comments and commission responses are as follows:

Comment: Commenter supported the rule amendment as being less cumbersome to all parties. The commenter further supported the proposed language regarding Internet based training.

Response: The commission agrees.

The amended rule is adopted pursuant to the Texas Labor Code §402.061 which requires the commission to adopt rules

necessary for the implementation and enforcement of the Texas Workers Compensation Act, the Texas Labor Code §§411.041 - 411.068, which require the commission to identify hazardous employers and develop, implement, and enforce accident prevention programs; and Texas Insurance Code, Article 576-3, Section 10, which authorizes and sets out the provisions for the Texas Mutual Insurance Company.

This amendment is adopted under Texas Labor Code §402.061 and §§411.041 - 411.068, and Texas Insurance Code, Article 5.76-3, Section 10.

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 19, 2002.

TRD-200206138
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: October 9, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 804-4287

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§5.1 - 5.5, 5.7, 5.10, and 5.14. The commission also adopts new §5.20 and §5.21. The commission adopts these amendments and new sections to Chapter 5 to implement House Bill (HB) 2912, Article 1 (Administration and Policy), §1.10, and HB 2914, §§45 - 52, as passed by the 77th Legislature, 2001. Sections 5.2, 5.3, and 5.5 are adopted *with changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3451). Sections 5.1, 5.4, 5.7, 5.10, 5.14, 5.20, and 5.21 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

HB 2912, §1.10, amended Texas Water Code (TWC), §5.107, relating to Advisory Councils, which authorized the commission to create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate. The amendment to §5.107 changed the title of the section from "Advisory Councils" to "Advisory Committees, Work Groups, and Task Forces." The amended section authorizes the commission or the executive director (ED) to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the ED may consider appropriate; requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces; and requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the commission's website. The amended section provides that the commission is not required to ensure that all representatives attend a scheduled meeting, and further provides that a rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

Additionally, HB 2914, §§45 - 52, amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Among the more significant amendments are changes to the definition of advisory committee, addition of a section relating to applicability of Chapter 2110, addition of a section relating to establishment of advisory committees, and changes to the section relating to the duration of advisory committees. A change to the definition of advisory committee in §2110.001 clarifies that an entity must have multiple members to be considered an advisory committee, and other changes remove the statements that an advisory committee is not a state agency and that it is created by or under state law. New §2110.0011 provides that Chapter 2110 applies unless and to the extent that another state law specifically states that the chapter does not apply; or a federal law or regulation imposes an unconditional requirement that irreconcilably conflicts with the chapter, or imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with the chapter. New §2110.0012 provides that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency; or the agency, under state or federal law, created the committee to advise the agency. The changes to §2110.008 provide that unless the state agency, in establishing an advisory committee, by rule, designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation.

The major part of implementing this statutory amendment is adopted as amendments to Chapter 5, Advisory Committees. In addition, a minor amendment to 30 TAC Chapter 20, Rulemaking, is part of the implementation of HB 2912 and is also published in the Adopted Rules section of this issue of the *Texas Register*. The amendment adds a requirement to §20.19, Working Groups, that the processes established under Chapter 5 relating to Advisory Committees and Groups shall be followed.

SECTION BY SECTION DISCUSSION

The adopted amendments to this chapter include changing the title from "Advisory Committees" to "Advisory Committees and Groups." The chapter is now divided into three subchapters: Subchapter A, to establish a common purpose for the other two subchapters; Subchapter B, to address advisory committees; and Subchapter C, to address advisory groups.

The amendments to §5.1, Purpose, make modifications to include the creation and operation of advisory groups in addition to advisory committees.

The amendments to §5.2, Definitions, change the definition of advisory committee and add definitions for balanced representation and minutes. The section is moved to Subchapter A to reflect its applicability to all of the chapter.

The amendments to §5.3, Creation and Duration of Advisory Committees Created by the Commission, expand the title of the section to specify that the section applies to committees created by the commission. The section is further amended to specify that an advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), as amended.

The amendments to §5.4, Purpose and Duties of Advisory Committees, clarify that advisory committees have no executive or administrative powers or duties with respect to the operation of the agency, rather than the operation of the commission as previously stated.

The amendments to §5.5, Composition of Advisory Committees, add a subsection that will emphasize that the commission shall make reasonable attempts to provide balanced representation on all advisory committees. The adopted subsection includes the exceptions provided by Texas Government Code, §2110.0011, as amended.

The amendments to §5.7, Membership, add "becomes ineligible" as another basis for a member to vacate his or her position on the committee.

The amendments to §5.10, Presiding Officer, modify the manner of appointing the presiding officer or other officers of advisory committees.

The amendments to §5.14, Monitoring of Advisory Committees and Records, reflects the title change of the section to highlight the commission's statutory responsibility to monitor an advisory committee's composition and activities. New subsection (a) is adopted to specifically establish that requirement. New subsection (c) is also adopted to require that minutes of committee meetings and reports shall be maintained in a form and location that is easily accessible to the public.

New §5.20, Advisory Groups, authorizes the ED to create and consult with advisory groups.

New §5.21, Formation of Advisory Groups, directs the ED to identify affected groups of interested persons for advisory groups, and to make reasonable attempts to balance advisory groups.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are not specifically intended to protect the environment, or reduce risks from environmental exposure and are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rules are intended to affect the commission's operations and are not anticipated to result in fiscal implications for any other unit of state or local government. The adopted rules are procedural in nature and are only intended to implement procedures for the appointing of persons to commission-initiated advisory committees and ED-created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission's website. The adopted rules also modify the effect of other state or federal law on the membership of advisory committees and alter the procedures allowed to set the duration of advisory committees. As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor are the rules adopted solely under the general powers of the commission. The commission solicited public comment on the draft regulatory impact analysis determination, but no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The adopted rules will implement HB 2912, §1.10 which authorizes the commission or the ED to create and consult with advisory committees, work groups, and task forces and requires the commission to make reasonable attempts to have balanced representation on those entities, monitor the composition and activities of the entities, and maintain that information in a form and location easily accessible to the public, including placing the information on the commission's website.

The adopted rules also implement HB 2914 which modified the effect of other state or federal law on the membership of advisory committees and altered the procedures allowed to set the duration of advisory committees.

These adopted rules substantially advance those purposes by defining balanced representation; requiring the commission and ED to make reasonable attempts to provide such balance; monitoring the composition and activities through attendance lists, annual reports, and minutes, if they are kept; and making the information available on the commission's website. The adopted rules also substantially advance those purposes by utilizing the statutory language concerning the effect of state and federal law on membership and duration of advisory committees.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the rules.

Because these adopted rules affect only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to these adopted rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adopted rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing on the proposal in Austin on May 20, 2002. No individuals provided oral comments at the hearing. The comment period closed on May 28, 2002. Written comments were submitted during the comment period by the Alliance for a Clean Texas (ACT). ACT opposed the proposal as discussed in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

ACT commented that the proposed rules attempt to exempt any advisory group created by the ED from the requirements to make publicly accessible information on the group's activities and to exempt ED-created groups from the definition of balanced representation, and that the rules attempt to authorize the agency to continue to conduct business "as usual."

The commission disagrees with this comment because a rule cannot overrule a statute and because the commission's policy at all times, and specifically with respect to advisory bodies, is to comply fully with all applicable statutes and rules. The commission notes that TWC, §5.107, requires only that reasonable attempts be made to obtain balanced representation. The rules also expressly require that reasonable attempts be made to have balanced representation on all advisory committees (§5.5) and advisory groups (§5.21).

Public information is defined in Texas Government Code, §552.002, as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body. There is no requirement to create public information. Public information remains public under these rules. The commission is not required under TWC, §5.1733, to create specific types of documents, such as minutes, attendance lists, or agendas. However, the commission may choose to use such documents to monitor the composition and activities of advisory groups. If kept, such documents would be public information and would be posted on the agency's website. In the case of advisory committees, a rule, §5.14, creates a duty to record minutes for advisory committees. Effective September 2001, the ED promulgated guidance directing staff to develop minutes for groups created by the ED and those minutes are posted on the agency's website.

The commission disagrees with the comment that the rules represent an effort to continue to conduct business "as usual." Upon the statute taking effect, the ED promulgated guidance that directs staff to change the manner in which advisory bodies are used by the ED and staff. This guidance includes direction to seek management review of the creation of advisory bodies, the creation of agendas and minutes, and the creation of websites for the posting of this information. The ED has also required staff to review all groups that were active on the effective date of the statute, and to attempt to obtain balanced representation on such groups or to terminate any where an attempt was not made.

The commission has made no changes in response to this comment.

ACT commented that by failing to adhere to the statutory definitions, the rules attempt to substantially narrow the type of advisory body covered by the balanced representation and information accessibility requirements.

The commission disagrees with this comment. Section 5.21 of the rules specifically applies the requirement to make reasonable attempts to have balanced representation on advisory groups created by the ED, even though the statute could be construed as excluding ED-created groups from this requirement. As previously discussed, Texas Government Code, §552.002 continues to apply to these groups. The commission has made no changes in response to this comment.

ACT commented that the definition section (proposed §5.2) must apply to the entire Chapter 5 and all aspects of the rules (balanced representation, keeping and posting of membership and minutes, and monitoring by the commission) must be made applicable to all advisory bodies, both those created by the commission itself and any created by the ED.

In response to this comment, the commission has moved the definition section (§5.2) to Subchapter A, which applies to the entire chapter. While the commission does not agree that this change is necessary to comply with HB 2912, the commission believes that this change will make the chapter more clear.

The commission disagrees with the comment that all aspects of the rules should apply to all advisory bodies. Subchapter B, which applies to advisory committees created by the commission, includes requirements that are not in TWC, §5.107. The commission finds that it would not be appropriate to apply many of the requirements of Subchapter B to many of the evanescent bodies created by the ED and staff. For example, Subchapter B now requires that an advisory committee elect its presiding officer. This process might not be appropriate for bodies that only will meet once, or are composed of members of the public and regulated community who elect to attend. The commission has made no changes in response to this comment.

ACT commented that the rules should expressly provide that only the commission or ED can create an advisory committee, work group, advisory group, or task force and that the law does not allow these groups to be created by individual staff members or departments.

The commission disagrees with this comment. First, TWC, §5.107(c), specifically contemplates the formation of groups at staff level. Second, the commission notes that these rules follow the statute in requiring a reasonable attempt to obtain balanced representation, whether an advisory body is created by the commission, the ED, or the ED's staff. Finally, the commission in 30 TAC §3.2 has defined "executive director" to include staff. Under the rules of statutory construction, the legislature is assumed to have had the knowledge of preexisting rules. The commission has made no changes in response to this comment.

SUBCHAPTER A. PURPOSE

30 TAC §5.1, §5.2

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general

applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the ED to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the ED may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

§5.2. Definitions.

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

(1) Advisory committee--As used in this chapter, a committee, council, commission, task force, or other entity, other than a state agency, created by the commission or by state law, that has as its primary function the provision of advice to the commission. An advisory group created by the executive director is not an advisory committee.

(2) Balanced representation--Membership that represents a diversity of viewpoints on issues to be discussed including: factors such as geography, socioeconomic status, ethnicity, and size and type of businesses and governments; and membership in classes such as environmental groups, trade groups, consumer or public interest groups, industries or occupations, and consumers of services provided by the commission or by industries or occupations.

(3) Minutes--Notes or summary covering points to be remembered from a meeting, not a detailed description or verbatim transcript of the discussion.

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 18, 2002.

TRD-200206084
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 8, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-5017

SUBCHAPTER B. ADVISORY COMMITTEES

30 TAC §§5.3 - 5.5, 5.7, 5.10, 5.14

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the ED to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the ED may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

§5.3. Creation and Duration of Advisory Committees Created by the Commission.

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), as amended.

§5.5. Composition of Advisory Committees.

(a) The composition of advisory committees created by the commission shall comply with the requirements of Texas Government Code, Chapter 2110, as amended.

(b) The commission shall make reasonable attempts to provide balanced representation on all advisory committees. A rule or other action may not be challenged because of the composition of an advisory committee. This section does not apply to an advisory committee to the extent that:

(1) another state law specifically states that Texas Government Code, Chapter 2110, as amended, does not apply; or

(2) a federal law or regulation:

(A) imposes an unconditional requirement that irreconcilably conflicts with the requirements of Texas Government Code, Chapter 2110, as amended; or

(B) imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with Texas Government Code, Chapter 2110, as amended.

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 18, 2002.

TRD-200206085
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 8, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-5017

SUBCHAPTER C. ADVISORY GROUPS

30 TAC §5.20, §5.21

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the ED to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the ED may consider

appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

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 18, 2002.

TRD-200206086
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 8, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-5017

CHAPTER 20. RULEMAKING

30 TAC §20.19

The Texas Commission on Environmental Quality (commission) adopts an amendment to §20.19 as part of the implementation of House Bill (HB) 2912, Article 1 (Administration and Policy), §1.10, and HB 2914, §§45 - 52, as passed by the 77th Legislature, 2001. Section 20.19 is adopted *with change* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3456).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

HB 2912 amended Texas Water Code (TWC), §5.107, relating to Advisory Committees, which authorizes the commission to create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate. The amendment to §5.107 changed the title of the section from "Advisory Councils" to "Advisory Committees, Work Groups, and Task Forces." The amended section authorizes the commission or the executive director (ED) to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the ED may consider appropriate; requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces; and requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the commission's website. The amended section provides that the commission is not required to ensure that all representatives attend a scheduled meeting, and further provides that a rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

Additionally, HB 2914, §§45 - 52, amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Among the more significant amendments are changes to the definition of advisory committee, addition of a section relating to applicability of Chapter 2110, addition of a section relating to establishment of advisory committees, and changes to the section relating to the duration of advisory committees. A change to the definition of advisory committee in §2110.001 clarifies that an entity must have multiple members to be considered an advisory committee, and other changes remove the statements that an advisory committee is not a state agency and that it is created by or under state law. New §2110.0011 provides that Chapter 2110 applies unless and to the extent that another state law specifically states that the chapter does not apply; or a federal law or regulation imposes an unconditional requirement that irreconcilably conflicts with the chapter; or imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with the chapter. New §2110.0012 provides that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency; or the agency, under state or federal law, created the committee to advise the agency. The changes to §2110.008 provide that unless the state agency, in establishing an advisory committee, by rule designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation.

The major part of implementing this statutory amendment is adopted as an amendment to 30 TAC Chapter 5, Advisory Committees, and is published in the Adopted Rules section of this issue of the *Texas Register*. This part of the implementation of HB 2912 changes the title and adds a requirement to §20.19 that appointment of any workgroups or persons to advise the commission or the ED on rulemaking must be in accordance with the process established under Chapter 5.

SECTION DISCUSSION

The adopted amendments to §20.19 add a requirement that the processes established under Chapter 5, relating to Advisory Committees and Groups, shall be followed. Comments received during the comment period pointed out a potential for confusion in the proposed language. To clarify that rulemaking advisory committees as well as rulemaking advisory groups are subject, as applicable, to the requirements of Chapter 5, the reference to Subchapter C has been deleted. The adopted amendments to this section also change the title of the section from "Working Groups" to "Working Committees and Groups."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule is not specifically intended to protect the environment or reduce risks from environmental exposure and is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or

local government. The rule is procedural in nature and is only intended to implement procedures for the appointing of persons to commission- initiated advisory committees and ED-created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission website. The rule also modifies the effect of other state or federal law on the membership of advisory committees and alters the procedures allowed to set the duration of advisory committees.

As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor is the rule adopted solely under the general powers of the commission. The commission solicited public comment on the draft regulatory impact analysis determination, but no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. This adopted rule will assist in the implementation of HB 2912, §1.10, which authorizes the commission or the ED to create and consult with advisory committees, work groups, and task forces and requires the commission to make reasonable attempts to have balanced representation on those entities, monitor the composition and activities of the entities, and maintain that information in a form and location easily accessible to the public, including placing the information on the commission's website.

The adopted rule also implements HB 2914 which modified the effect of other state or federal law on the membership of advisory committees and altered the procedures allowed to set the duration of advisory committees.

The adopted rule substantially advances those purposes by requiring compliance with other rules defining balanced representation; requiring the commission and ED to make reasonable attempts to provide such balance; monitoring the composition and activities through attendance lists, annual reports, and minutes, if they are kept; and making the information available on the commission's website. The rule also substantially advances those purposes by utilizing the statutory language concerning the effect of state and federal law on membership and duration of advisory committees.

Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which will exist in the absence of the rule.

Because the rule affects only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to the adopted rule.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adopted rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing on the proposal in Austin on May 20, 2002. The comment period closed on May 28, 2002. Written comments were received from the Alliance for a Clean Texas (ACT).

RESPONSE TO COMMENTS

ACT commented that §20.19 must be modified to apply all requirements of Chapter 5 to rulemaking advisory committees, whether they are created by the ED or by the commission.

The commission disagrees in part with this comment. Chapter 5, as proposed, creates no exception for rulemaking advisory bodies from its requirements. Therefore, bodies created under §20.19 would be subject to the requirements of Chapter 5. As a result of this comment, the commission has deleted reference to Subchapter C to clarify that rulemaking advisory committees must comply with applicable provisions of Chapter 5. The commission has also revised the language of §20.19 to clarify that the executive director may create such informal bodies, subject to Chapter 5.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the ED to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the ED may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

§20.19. Working Committees and Groups.

Before initiating any formal rulemaking action, the executive director may convene informal working groups to obtain viewpoints and advice of interested persons. The commission or the executive director may also appoint working committees or groups of experts, interested persons, or representatives of the general public to advise it regarding any contemplated rulemaking. The powers of such working groups shall be advisory only. The processes established under Chapter 5 of this title (relating to Advisory Committees and Groups) shall be followed.

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 18, 2002.

TRD-200206087

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 8, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-5017

♦ ♦ ♦

CHAPTER 21. WATER QUALITY FEES

30 TAC §§21.1 - 21.4

The Texas Commission on Environmental Quality (commission) adopts new Chapter 21, Water Quality Fees, §§21.1 - 21.4. Sections 21.2 - 21.4 are adopted *with changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3459). Section 21.1 is adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The rulemaking would implement this mandate by creating new Chapter 21 using language from 30 TAC Chapters 220, Regional Assessments of Water Quality and 305, Consolidated Permits, that is applicable to the WQAF and the WTF, respectively. As directed by the legislature, the rules would establish a new consolidated methodology for assessing water quality fees. The consolidated water quality fee would replace both the current WQAF (referred to as the Clean Rivers Fee) and the WTF. This consolidated water quality fee is required by Texas Water Code (TWC), §26.0291 and will provide funding for the Texas Clean Rivers Program (TCRP) described in TWC, §26.0235 and funding for administration of water quality programs. Reasonable fees assessed to persons who benefit from the programs are necessary for these two programs to run efficiently and effectively.

Consolidation of the two current fees involves careful consideration of the requirements of the two programs, the amount of fees paid by holders of the various types, and sizes of wastewater permits. Historically, two methods have been used to calculate the annual fees assessed against wastewater permit holders. The WQAF calculation was relatively simple, assigning set dollar amounts for certain parameters. The WTF calculation was more complicated and comprehensive and included assigning points for parameters indicative of the facility's pollution potential. For the consolidated water quality fee, the calculation method has been kept as simple as possible, while following statutory criteria and using parameters which reflect the character and the pollution potential of the wastewater being considered. The result was a combination of the best aspects of both of the current methodologies used for the annual fees for wastewater permit holders. For water rights, the fee methodology was not changed.

The adopted fee structure is based upon permit limits.

SECTION BY SECTION DISCUSSION

New §21.1, *Purpose and Scope*, provides that the purpose and scope of the chapter is to implement the Water Quality Fee Program. This fee will be assessed against wastewater permit holders and holders of a water right permit or certificate of adjudication.

New §21.2, *Definitions and Abbreviations*, includes definitions and abbreviations used in this chapter. These definitions are necessary to administer the fee programs.

New §21.3, *Fee Assessment*, details the methodology for the fee calculations and assessments for wastewater permits and water rights. Section 21.3(b)(5)(B) is adopted with changes to the proposed text to decrease the fee for uncontaminated flow from $13 per million gallons per day (mgd) to $10 per mgd. Section 21.3(b)(2) and (6)(A) and (B) is adopted with change to the proposed text to decrease the minimum fee from $1000 to $800 for active permits and $500 to $400 for inactive permits. The methodology for the consolidated water quality fee retained the basic calculation method related to flow volume and traditional pollutants used for the WQAF while including consideration of the "major" designation type of facility, toxic ratings for industrial permits, and storm water discharge authorization, and making reductions for permits that are inactive or are for land application facilities, in order to maintain the current fee base needed to support the programs. The methodology for assessment of fees for water rights is not changed. This description of the methodology for assessing fees is necessary to provide notice to permit holders concerning the basis of the fees charged.

New §21.4, *Fee Period, Adjustment, and Payment*, explains the fee period, restrictions regarding adjustments, and requirements regarding payments of the water quality fee. These provisions provide procedures which are necessary to administer the fee program. These provisions relate to time periods assessed, how amendments and cancellations are assessed, how transfers of ownership of permits are handled, and payment provisions. Subsection (e) has been modified since proposal to allow electronic funds transfer as a method of payment to be consistent with other commission rule language.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as specified in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to create new Chapter 21 using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. The consolidation of these fees does not affect the environment or public health. Also, the rulemaking does not affect the economy, productivity, competition, or jobs because it is a combining and restructuring of water fees to be paid for the water quality program. While there may be increased fees to some entities, there would also be reduced fees to some entities, and this should not impact the economy or jobs.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to create new Chapter 21, using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. This rulemaking would not burden private real property because they are fee rules which relate to payment for commission water quality programs.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the adopted new rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules subject to the Texas Coastal Management Program, nor do they affect any action or authorization identified in §505.11. This rulemaking concerns only administrative rules of the commission intended to establish a new consolidated methodology for assessing fees as directed by the legislature as a replacement for the WQAF and the WTF. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on May 21, 2002, in Austin. The comment period closed on May 28, 2002. The commission received comments from Alliance For A Clean Texas (ACT); Association of Electric Companies of Texas (AECT); City of Austin (COA); City of Fort Worth (COFW); Reliant Energy (RE); San Antonio Water System (SAWS); Storm Water Management Joint Task Force (SWMJTF); TXU Energy (TXU); Representatives Ron Lewis and Gary L. Walker; and Representative David Counts, Chairman, House Committee on Natural Resources. Oral comments were provided at the public hearing by AECT and COA.

Four commenters generally supported the rulemaking with suggested revisions. Two commenters specifically opposed a portion of the rulemaking. Five commenters did not support or oppose the rulemaking, but made suggestions.

RESPONSE TO COMMENTS

ACT commented it acknowledges the efforts by the commission to seek public input from cities, industries, and the public interest community both through meetings and a formal comment process and believes that the commission arrived at a water quality fee that is fair and simpler to understand; however, ACT submitted specific suggestions to improve the rules. The first suggestion was to include a requirement that the commission submit information about how the monies raised by the new fee are spent to both political leaders and the public. The second suggestion was to lower the minimum fees to $750 for an active permit and $375 for an inactive permit to address ACT's concern that many of the smallest systems will see a large increase. The third suggestion was to include a toxicity fee for municipal discharges such as a $250 surcharge to be added for permit holders who have permits requiring biomonitoring testing and a $250 surcharge to be added for public and private wastewater discharge permit holders who have permits with numerical limits. The fourth suggestion was to add a $100 surcharge for any active permit holder who discharges into a stream, reservoir, or bay which is on the state's most current 303d list of impaired waterbodies. Lastly, ACT suggested that the fee be based on actual average yearly discharge data, but recognized that this suggestion may have to be considered at a later date because of its complexity.

RESPONSE

The commission appreciates ACT's support, but disagrees with the first, third, and fourth suggestions. The commission disagrees with creating another report because the commission currently reports on how the commission monies are spent through quarterly and annual performance measures submitted to the Legislative Budget Board and the United States Environmental Protection Agency. Also, the TCRP will continue to submit a document detailing program expenditures, as has been done in the past with the cost accounting report. These reports adequately indicate commission expenditures. The commission disagrees with including a toxicity fee for permits that have biomonitoring requirements or toxicant numerical limits because the conditions which necessitate those requirements in permits are, in all but a few cases, based on flow volume, which is currently included in the proposed fee calculation methodology. The commission declines to add a surcharge for permit holders discharging into 303(d) impaired waterbodies because the 303(d) list is not always directly related to the waste stream discharge; therefore it is not a fair and equitable methodology to use the 303(d) list as a mechanism to generate revenue.

The commission appreciates ACT's comment on a fee based on actual average yearly discharge data and will examine this option after further study. No changes have been made in response to these comments.

Upon review and analysis of ACT's second comment, the commission determined that lowering the minimum fees would still adequately fund the program. It is therefore appropriate to lower the minimum fee from $1000 to $800 for active permits and $500 to $400 for inactive permits. Section 21.3(b)(2) and (6)(A) and (B) has been changed in response to this comment.

AECT commented that it appreciates the commission's efforts in making the water quality fees revenue neutral and avoiding major increases within specific segments; however, it does not believe that this has been achieved within the electrical generating sector. AECT also commented that the existing fee cap was $65,000 and the new consolidated fee cap would be $75,000. AECT suggested a $15,000 cap on the fee for uncontaminated flow.

RESPONSE

The commission appreciates AECT's support, but disagrees with a $15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. There is no justification for having a cap on one parameter and not the others. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from $13 per million gallons per day (mgd) to $10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

COA commented that the commission's efforts were commendable, but would like to see a performance based system in the future based on actual discharge and performance.

RESPONSE

The commission appreciates COA's support and will examine this option after further study. No changes have been made in response to this comment.

COFW objected and expressed concerns that the characterization of storm water as wastewater in the proposed rules would result in financial and administrative burdens placed on municipalities. COFW requested that wastewater and storm water be defined, characterized, and regulated as distinct things.

RESPONSE

The commission responds that it is inappropriate to make changes that would affect the operation of the program during a rulemaking package specifically intended to only address fee assessments and fee consolidation. No changes have been made in response to these comments.

RE commented that the commission has done an admirable job in developing a rate schedule uniting the two existing water fees into the new Water Quality Fee and that it appreciates the efforts in making the schedule revenue neutral, which avoids major increases within specific segments and disproportionate effects; however, it does not believe that this has been achieved within the electrical generating sector. RE suggested a $15,000 cap on the fee for uncontaminated flow.

RESPONSE

The commission appreciates RE's support, but as stated previously, disagrees with a $15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from $13 per mgd to $10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

SAWS stated that it recognizes the value and importance of the TCRP in maintaining surface water quality throughout the state, but is concerned about a disproportional funding of the program being placed on larger utilities. SAWS also stated that it was important that the same level of monies currently derived from the TCRP be returned to local river authorities under the new rules to ensure that local water quality issues will be addressed by local partners and stakeholders.

RESPONSE

The commission disagrees that the fee is disproportional on large utilities. Because the fee is based on actual amounts and no longer on ranges, the fee is equitable and proportional to the amount of permitted discharges. The new rules would not change the funding levels for the TCRP in Fiscal Years (FY) 2002 and 2003. Any changes in funding for the TCRP after FY 2003 would be done in consultation with affected parties, the commission, and the legislature. No changes have been made in response to these comments.

SWMJTF objected to the characterization of storm water as wastewater and submitted specific suggestions to revise the rules to distinguish between storm water discharges and wastewater discharges. The first suggestion was to replace the term "wastewater permit" with the term "discharge permit." The second suggestion was to replace the phrase "wastewater discharges" with "wastewater and storm water discharges." The third suggestion was to replace the phrase "waste treatment facilities" with "waste treatment and storm sewer facilities." The fourth suggestion was to remove the reference to TWC, Chapter 26, §21.1(b). The fifth suggestion was to list storm water as a third flow type in §21.2(a)(3). The sixth suggestion was to amend §21.2(a)(14) to modify the definition of "wastewater permit" to become "discharge permit" and include wastewater and storm water as they apply to individual and general permits. Lastly, SWMJTF suggested the removal of the word "other" in §21.3(b)(6)(C).

RESPONSE

The commission responds that it is inappropriate to make changes that would affect the operation of the program during a rulemaking package specifically intended to only address fee assessments and fee consolidation. No changes have been made in response to these comments.

TXU commented that there is ambiguity associated with the rate schedule called the Toxicity Rating. It points out that the toxicity rating is not presented in the permit and the permittee does not have the opportunity to comment on this rating at the time an application is reviewed. TXU also suggested a cap of $15,000 on the fee for uncontaminated flow.

RESPONSE

The commission agrees that the permittee should have the opportunity to comment on the toxicity rating factor. Permittees will have the opportunity to evaluate the toxicity rating during the application process, or any time throughout the life of the permit; however, no change has been made to the rule language in response to this comment. The commission disagrees with a $15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from $13 per mgd to $10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

Representatives Ron Lewis, Gary L. Walker, and David Counts commented that the statutory increase in the cap to $75,000 was not intended to affect a large group of fee payers, particularly industrial users of uncontaminated water.

RESPONSE

The agency projects that less than 1.61% of all fee payers will pay the maximum fee of $75,000 in FY 03. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from $13 per mgd to $10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

STATUTORY AUTHORITY

The new rules are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

§21.2. Definitions and Abbreviations.

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

(1) Aquaculture--The commercial propagation and/or rearing of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) Flow--The total by volume of all wastewater discharges authorized under a permit issued in accordance with Texas Water Code (TWC), Chapter 26, expressed in order of preference, as an average

flow per day, an annual average, a maximum flow per day, or an annual maximum, exclusive of variable or occasional storm water discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional storm water discharges.

(3) Flow type--

(A) Contaminated--Sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters, or flows containing more than one million gallons per day process wastewater regardless of the percent of total comprised of process wastewater.

(B) Uncontaminated--Non-contact cooling water or mixed flows containing not more than one million gallons per day of process wastewater, with the overall mixture being at least 90% non-contact cooling water.

(4) Inactive permit--A permit which authorizes a waste treatment facility which is not yet operational or where operation has been suspended, and where the commission has designated the permit as inactive.

(5) Land application (retention) permit--A permit which does not authorize the discharge of wastewater into surface waters in the state, including, but not limited to, permits for systems with evaporation ponds or irrigation systems.

(6) Major permit--A permit designated as a major permit, by either EPA or the commission and subject to provisions of the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System's permit authority.

(7) Parameter--A variable which defines a set of physical properties whose values determine the pollution potential for a waste discharge.

(8) Report only permit--A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

(9) State water--The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water. State water does not include percolating groundwater, nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(10) Storm water authorization--Some individual permits authorize the variable or occasional discharge of accumulated storm water and storm water runoff, but without any specific limitation on the volume of discharge. Storm water discharge may be the only discharge authorized in a permit, or it may be included in addition to other parameters.

(11) Toxicity rating--A graduated rating, with Groups I - VI, assigned to an industrial permit based on the source(s) of wastewater, the standard industrial classification of the facility, and the specific type of operation.

(12) Traditional pollutants--Certain parameters typically found in wastewater permits, specifically oxygen demand (biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC)), total suspended solids (TSS), and ammonia (NH_3).

(13) Uses of state water--Types of use of surface water authorized by water rights under TWC, Chapter 11.

(A) Agricultural use--Any use or activity involving agriculture, including irrigation. The definition of "agriculture use" is the same as in TWC, §11.002(12), as follows:

(i) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(ii) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(iii) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(iv) raising or keeping equine animals, wildlife management; and

(v) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purposes of participating in any governmental program or normal crop or livestock rotation procedure.

(B) Consumptive use--The use of state water for domestic and municipal, industrial, agricultural, or mining purposes, consistent with the meaning of these uses for which water may be appropriated under TWC, Chapter 11.

(C) Hydropower use--The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(D) Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including, without limitation, commercial feedlot operations, commercial fish and shellfish production, and the development of power by means other than hydroelectric.

(E) Irrigation use--The use of state water for the irrigation of crops, trees, and pasture land including, but not limited to golf courses and parks which do not receive water through a municipal distribution system. This use is now part of the definition of agriculture use in TWC, §11.002(12).

(F) Mariculture use--The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water. This use is exempt from the need for a water right.

(G) Mining use--The use of state water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(H) Municipal--The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal

sewage effluent on land, pursuant to a TWC, Chapter 26, permit where:

(i) the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) the application site is within an area for which the commission has adopted a no-discharge rule.

(I) Non-consumptive uses--The use of state water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation, and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under TWC, Chapter 11.

(J) Other use--Any beneficial use of state water not otherwise defined herein.

(K) Recharge--The use of a surface source of state water for injection into an aquifer, or for increasing the amount of natural recharge to an underground aquifer.

(L) Recreational use--The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(14) Wastewater permit--An order issued by the commission in accordance with the procedures prescribed by TWC, Chapter 26, establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made, and including those permits issued under the authority of TWC, Chapter 26, and other statutory provisions (such as the Texas Health and Safety Code, Chapter 361) for the treatment or discharge of wastewater. For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule and registrations and similar authorizations other than general permits.

(A) Individual permit--A wastewater permit, as defined in TWC, §26.001, including registrations and permits by rule, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in TWC, Chapter 26 (other than TWC, §26.040).

(B) General permit--A wastewater permit issued under the provisions of §205.1 of this title (relating to Definitions) authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by TWC, §26.040.

(15) Water right--A right acquired under authority of TWC, Chapter 11 and the rules of the commission to impound, divert, store, convey, or use state water.

(b) Abbreviations. The following abbreviations apply to this chapter.

(1) (lb/day)--Pounds per day.

(2) mgd Million gallons per day.

(3) mg/l--Milligrams per liter. For fee calculations, mg/l are converted to pounds per day (lb/day) using mg/l multiplied by flow volume in mgd, and multiplied by 8.34 equals lb/day.

(4) SIC--Standard Industrial Classification assigned to a facility generating wastewater.

§21.3. Fee Assessment.

(a) The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year, without regard to the actual amount or quality of effluent discharged or the actual amount of water used.

(b) Assessment for wastewater permits.

(1) An annual fee is assessed against each person holding a wastewater permit. A separate fee is assessed for each wastewater permit.

(2) The maximum fee which may be assessed any permit is $75,000, except that the maximum for an aquaculture permit is $5,000. The minimum fee for an active permit is $800. The minimum fee for an inactive permit is $400.

(3) In assessing a fee under this chapter, the commission considers the following factors:

(A) flow volume, and type;

(B) traditional pollutants;

(C) toxicity rating;

(D) storm water discharge;

(E) major designation;

(F) active or inactive status;

(G) discharge or retention;

(H) the designated uses and ranking classification of waters affected by waste discharges; and

(I) the costs of administering the following commission programs:

(i) water quality administration, including inspection of waste treatment facilities and enforcement of the provisions of Texas Water Code (TWC), Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities;

(ii) the Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001 (5)).

(4) For the purpose of fee calculation, chemical oxygen demand (COD) and total organic carbon (TOC) are converted to biochemical oxygen demand (BOD) values and the highest value is used for fee calculation. The conversion rate for TOC is three pounds of TOC is equal to one pound of BOD (3:1). The conversion rate for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(5) Fee rate schedule. Except as provided in paragraph (6) of this subsection, the fee shall be determined as the sum of the following factors:

(A) contaminated flow, $700 per mgd;

(B) uncontaminated flow, $10 per mgd;

(C) traditional pollutants, $15 per pound per day;

(D) toxic rating for industrial discharges:

(i) Group I, $200;

(ii) Group II, $700;

(iii) Group III, $1,050;

(iv) Group IV, $1,575;

(v) Group V, $3,150; and

(vi) Group VI, $6,300;

(E) major permit designation, $2,000; and

(F) storm water authorization, $500.

(6) For the types of permits listed in this paragraph, these additional guidelines will apply in determining the fee assessment.

(A) Land application (retention) permits. The fee assessed a land application permit shall be 50% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an active land application permit be less than $800 per year.

(B) Inactive permits. The fee assessed an inactive permit shall be 50% of that calculated under paragraph (5) of this subsection. In the event an inactive permit is for a land application operation, the fee assessed shall be 25% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an inactive permit be less than $400 per year.

(C) Storm water only permits. The fee for an active permit which authorizes discharge of storm water only, with no other wastewater, is $500.

(D) Aquaculture permits.

(i) In determining the flow volume to be used in fee calculation for an aquaculture production facility under paragraph (5) of this subsection, the flow for the facility shall be the facility's permitted annual average flow, or the facility's projected annual average flow if the permit does not have an annual average flow limitation.

(ii) If the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 preceding the fee year and shall be signed and certified as required by §305.44 of this title (relating to Signatories to Applications), and that amount will be used for fee calculation.

(iii) The annual fee for aquaculture production facilities shall not exceed $5,000.

(7) A multiplier may be applied to adjust the total fee per permit, which would also adjust the total assessment for all permits under the Water Quality Fee Program. At the time of initial implementation, the multiplier is set at 1.0, with no impact on the fees.

(c) Assessment for water rights.

(1) An annual fee is assessed against each person holding a water right, except for those exemptions specified in this section. A separate fee is assessed for each water right. These fees do not apply to water uses, including domestic and livestock use, which are exempt from the need for authorization from the commission under TWC, Chapter 11.

(2) This fee will apply to all municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (b) of this section, and to all other types of water rights except agriculture water rights and certain hydroelectric water rights described in paragraph (6) of this subsection.

(3) The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use shall be $.22 per acre-foot up to 20,000 acre-feet, and $.08 per acre-foot thereafter.

(4) An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described in paragraph (5) of this subsection.

(5) Except for water rights for hydropower purposes, the fee shall be $.021 per acre-foot for water rights for non-consumptive use above 2,500 acre-feet per year, up to 50,000 acre-feet, and $.0007 per acre-foot thereafter.

(6) The fee for water rights for hydropower purposes shall be $.04 per acre-foot per year up to 100,000 acre-feet, and $.004 per acre-foot thereafter. This fee shall not be assessed against a holder of a non- priority hydroelectric right who owns or operates privately-owned facilities which collectively have a capacity of less than two megawatts.

(7) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use, may be exempted from the assessment of a fee under paragraph (3) of this subsection.

§21.4. Fee Period, Adjustment, and Payment.

(a) The annual water quality fee assessment is for the period from September 1 through August 31, and is based on the authorized permit or water right limits as of September 1 each year, as stated in §21.3(a) of this title (relating to Fee Assessment).

(b) New or amended wastewater permits and water rights granted after September 1 will be billed for the new or amended authorization in the annual assessment for the fee year subsequent to the fee year in which the new authorization was granted.

(c) Cancellation or revocation, whether by voluntary action on the part of the holder of a wastewater permit or a water right, or as a result of proceedings initiated by the commission, will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid.

(d) Transfer of ownership of a wastewater permit or a water right will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid. The commission shall not process a transfer request until all annual fees owed the commission by the applicant, or for the permitted facility, are paid in full. Any wastewater permit holder or water right holder to whom a permit is transferred shall be liable for payment of any associated outstanding fees and penalties owed the commission.

(e) Annual water quality fees are payable within 30 days of the billing date each year. Fees shall be paid by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (to be effective September 1, 2002).

(f) Water quality fees are payable regardless of whether the permitted wastewater facility actually is constructed or in operation, or whether any authorized water right facility has been constructed or diversion of state water made.

(g) Owners or operators of a facility failing to make payment of the fees imposed under this chapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees). In addition, failure to make payment in accordance with this chapter constitutes a violation subject to enforcement pursuant to the provisions of Texas Water Code, §26.123.

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 16, 2002.

TRD-200206032
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-6087

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS
SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §50.131, Purpose and Applicability, *without change* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2925) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission has the statutory duty and responsibility to create and supervise certain water and water-related districts in accordance with the Texas Water Code (TWC). There are approximately 1,000 active water districts in Texas that are overseen by the commission. TWC, §49.351 allows any district that provides potable water or sewer service to household users to establish, operate, and maintain a fire department. A district may also operate a fire department jointly with another district or contract with any person to perform fire-fighting services within the district. In addition to complying with other statutory requirements, a district that proposes to provide fire-fighting services must have a fire department plan approved by the commission. Senate Bill (SB) 1444, 77th Legislature, 2001, amended TWC, §49.351 to delete the requirement that the commission hold a hearing before acting on an application for approval of a fire department plan. Because a hearing is no longer required for these applications, it is now possible for the commission to delegate the authority to act on applications for approval of fire department plans to the commission's executive director (ED) under TWC, §5.122.

In a related rulemaking amending 30 TAC Chapter 293, concerning Water Districts, which is in this issue of the *Texas Register*, the commission is establishing new or revised requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, as amended by SB 1444, Legislature, 2001, and certain other statutory revisions enacted in 2001. In the rulemaking to amend Chapter 293, the commission repealed §293.121, *Approval of Fire Department Projects*. That section provided that the ED is responsible only for reviewing fire department plans. With the repeal of §293.121 and the amendment to §50.131 that is adopted in this rulemaking, the ED will still be responsible for reviewing applications for approval of fire department plans, but will also be authorized to approve those plans on behalf of the commission. In the Chapter 293 rulemaking, the commission also amended §293.11, *Information Required to Accompany Applications for Creation of Districts,* to allow fire department plans to be submitted to the commission for approval along with an application to create a district; this change also implements portions of SB 1444. In addition, the commission amended §293.123, *Application Requirements for Fire Department Plan Approval*, to implement other revisions to TWC, §49.351, concerning the actions a district must take in order to provide fire-fighting services.

SECTION DISCUSSION

Existing §50.131(c) lists certain applications for which the commission has not delegated approval authority to the ED, including in §50.131(c)(4)(E), applications under TWC, §49.351 for approval of a fire department or fire-fighting services plan. The commission is deleting §50.131(c)(4)(E). This revision authorizes the ED to approve fire department and fire-fighting services plans under existing §50.131(b)(5), which generally allows the ED to act on district matters under TWC, Chapters 49 - 66.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §50.131 does not meet the definition of a major environmental rule because the amendment is procedural in nature. The only purpose of the amendment is to delegate to the ED the authority to act on district applications for approval of fire department and fire-fighting services plans.

Further, this rulemaking does not meet the applicability criteria of a "major environmental rule" because the adopted amendment does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Specifically, the adopted amendment does not exceed a standard set by federal law, nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the adopted rulemaking. The amendment is not adopted solely under the general rulemaking authority of the commission, but also under TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval; the adopted amendment does not exceed the express requirements of those state statutes.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendment and performed an assessment of whether the amendment constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the adopted amendment is to delegate to the ED the authority to act on district applications for approval of fire department and fire-fighting services plans. Promulgation and enforcement of the amendment will constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking

as the adopted rule is procedural in nature and neither relates to nor has any impact on the use or enjoyment of private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program nor does it affect any action or authorization identified in §505.11. The only effect of the rulemaking is to authorize the ED to approve district fire department plans. Therefore, the rulemaking is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The public comment period ended May 13, 2002, and no comments were received.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state, and also TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters, and §49.351, as amended by SB 1444, which requires the commission to adopt rules under which fire plans will be considered for approval.

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 16, 2002.

TRD-200206031
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

CHAPTER 220. REGIONAL ASSESSMENTS OF WATER QUALITY

The Texas Commission on Environmental Quality (commission) adopts the *repeal* of Subchapter A, Program for Monitoring and Assessment of Water Quality by Watershed and River Basin, §§220.1 - 220.7; and Subchapter B, Program for Water Quality Assessment Fees, §220.21 and §220.22. The commission adopts a concurrent replacement of the repealed sections with *new* §§220.1 - 220.8. The commission adopts *repealed* §§220.1 - 220.7, 220.21 and 220.22; and *new* §§220.1 - 220.8 *without changes* as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3506), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The rulemaking would repeal rules relating to WQAFs and move them to new 30 TAC Chapter 21, Water Quality Fees. Concurrently, new Chapter 21 is adopted in this issue of the *Texas Register*. This rulemaking would also repeal and reformat provisions that are still applicable to the water quality assessment program, also referred to as the Texas Clean Rivers Program (TCRP).

SECTION BY SECTION DISCUSSION

Existing §§220.1 - 220.7 are repealed and replaced with new §§220.1 - 220.8 for the purpose of non-substantive formatting. These provisions were not substantively revised.

Existing §220.21 and §220.22 are repealed because the fee rules for this program are concurrently adopted in new Chapter 21.

Section 220.1, Purpose and Scope

New §220.1(a) provides that the purpose and scope of the chapter is to establish procedures for the implementation of the TCRP.

New §220.1(b) provides that river authorities or designated local governments shall be eligible for reimbursement based on equitable apportionment and that allocation procedures be periodically reviewed.

Section 220.2, Definitions

New §220.2 includes definitions for the following words used in this chapter: assessment report; designated local government; nonpoint source pollution; pollution; quality assurance project plan; river authority; river basins and coast basins; total maximum daily load; unclassified waters; wastewater permit; water right; and work plan.

Section 220.3, Responsibilities of the Commission

New §220.3(a) provides that the commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality.

New §220.3(b) provides that the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the TCRP.

New §220.3(c) provides that the commission develop quality control/quality assurance procedures to insure that water quality data collected will maintain statewide consistency.

New §220.3(d) provides that the commission has the primary responsibility for implementation of water quality management functions.

New §220.3(e) provides that the commission will utilize water quality assessments to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

New §220.3(f) provides that the commission will assess and collect fees from wastewater permit holders and water right holders and will apportion those funds equitably among the basins.

Section 220.4, Responsibilities of River Authorities and Designated Local Governments

New §220.4(a) provides that each river authority and designated local government that has entered into an agreement with the

commission shall: organize and lead a basin-wide steering committee; develop and maintain a basin-wide water quality monitoring program; establish and maintain a watershed and river basin water quality database and/or clearinghouse; identify water quality problems and known pollution sources and set priorities for taking appropriate actions; develop a process for public participation; recommend water quality management strategies; and develop work plans.

New §220.4(b) provides that each local government or other agency that collects water quality data within the watershed shall cooperate in developing the basin monitoring plan and assessment.

New §220.4(c) provides that monitoring and assessment is a continuing duty and shall be revised periodically as appropriate.

Section 220.5, Responsibilities of Steering Committees

New §220.5(a) provides that the steering committee's role is advisory in nature and involves assistance with the review of local issues and creation of priorities.

New §220.5(b) provides that a steering committee established by the commission and contracted to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to certain requirements related to agency advisory committees.

New §220.5(c) provides that steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities.

Section 220.6, Reporting Requirements

New §220.6(a) provides that each river authority submit a written summary report to the appropriate entities at the appropriate year of the permitting cycle.

New §220.6(b) provides that each river authority and designated local government develop a Basin Highlight Report annually to be provided to each member of the basin steering committee and all fee payers in the basin.

Section 220.7, Leveraging of Funds to Support Federal and State Grant Programs

New §220.7 provides that the commission, river authorities, and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall goals of this chapter.

Section 220.8, Allocation of Water Quality Fee Revenue for the Purpose of Regional Assessments of Water Quality

New §220.8(a) provides that a river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

New §220.8(b) provides that the schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The rulemaking repeals rules relating to fees for this program; the new fee rules are adopted in new Chapter 21. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The primary purpose of this rulemaking is to repeal rules relating to fees for this program; the new fee rules will be adopted in new Chapter 21. The repeal of these rules will not burden private real property because the repeal of these fees does not relate to private real property. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting which also will not burden private real property because it does not relate to private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the adopted repeals and new rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules subject to the Texas Coastal Management Program, nor do they affect any action or authorization identified in §505.11. This rulemaking concerns assessments of water quality and is intended to repeal Subchapters A and B of Chapter 220, and replace the chapter with language from Subchapter A that is applicable to the water quality assessment program, while Subchapter B will be replaced by new Chapter 21. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on May 21, 2002, in Austin. The comment period closed on May 28, 2002. No comments on the repeals and reformatting in this chapter were received. However, the substantive comments received on this rulemaking have been addressed in the RESPONSE TO COMMENTS section in the new Chapter 21, which is published concurrently in this issue of the *Texas Register*.

SUBCHAPTER A. PROGRAM FOR MONITORING AND ASSESSMENT OF WATER QUALITY BY WATERSHED AND RIVER BASIN

30 TAC §§220.1 - 220.7

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

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 16, 2002.

TRD-200206033
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-6087

30 TAC §§220.1 - 220.8

STATUTORY AUTHORITY

The new rules are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

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 16, 2002.

TRD-200206034
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 28, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER B. PROGRAM FOR WATER QUALITY ASSESSMENT FEES

30 TAC §220.21, §220.22

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

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 16, 2002

TRD-200206035
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-6087

CHAPTER 293. WATER DISTRICTS

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Subchapter A, *General Provisions*, §293.1; Subchapter B, *Creation of Water Districts*, §293.11; Subchapter E, *Issuance of Bonds*, §§293.42, 293.44, 293.46, 293.47, 293.51, 293.56, and 293.59; Subchapter G, *Other Actions Requiring Commission Consideration for Approval,* §293.81 and §293.89; Subchapter I, *District Name Changes and Posting Signs*, §293.103; Subchapter K, *Fire Department Projects*, §293.123; Subchapter N, *Petition for Approval of Impact Fees,* §293.171; and Subchapter P, *Acquisition of Road Utility District Powers by Municipal Utility District*, §293.201 and 293.202. The commission also adopts in Subchapter G, the readoption of §293.87, in Subchapter J, *Utility System Rules and Regulations*, new §293.113, and in Subchapter K the repeal of §293.121.

Sections 293.42, 293.44, 293.47, 293.56, 293.81, 293.103, and 293.201 are adopted *with changes* to the proposed text as published in the April 12, 2002 issue of the *Texas Register (*27 TexReg 2984). Sections 293.1, 293.11, 293.46, 293.51, 293.59, 293.87, 293.89, 293.113, 293.123, 293.171, and 293.202, and the repeal of §293.121 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code (TWC). There are approximately 1,000 active water districts in Texas which are overseen by the commission. Chapter 293 governs the creation, supervision, and dissolution of all general and special law districts and the conversion of districts into municipal utility districts. Further, Chapter 293 provides the rules which

govern the review of bonds for engineering standards and economic feasibility of applications in order to assure that construction projects are designed and completed with the proper approvals, thereby ensuring quality service. The chapter is also important because it ensures that bond funds are used for the benefit of the residents of the districts and that proceeds from bond issues are used to promote a district's intended purpose. The commission also has certain jurisdiction over approximately 55 water supply or sewer service corporations operating under TWC, Chapter 67, that provide sewer service.

The adopted rulemaking will establish new or revised requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, as amended by Senate Bill (SB) 1444; House Bill (HB) 2994; HB 2912, §20.02 and §18.01; and a portion of SB 2, 77th Legislature, 2001. SB 1444 amends provisions in TWC, Chapter 49 relating to the administration, management, operation, and authority of water districts and authorities, and in Chapter 54, concerning municipal utility districts. HB 2994 and SB 1444 both amend TWC, §49.108 to exempt from commission review district contract tax obligations for bonds issued by a municipality. HB 2912, §20.02, and SB 2, §2.58, also address contract taxes by amending TWC, 51.149. The adopted rules also implement HB 2912, §18.01, which changes the name of the commission to the Texas Commission on Environmental Quality, to be effective September 1, 2002.

Specifically, the adopted rules will allow a fire plan to be approved at the time of district creation; require certificates of land ownership and value to be provided by a central appraisal district (CAD) in lieu of the county tax assessor; add provisions to allow districts to fund costs related to recreational facilities; modify provisions for allowable change orders; provide additional exemptions from having to obtain commission approval of contract tax obligations and impact fees; add provisions regarding districts and water supply corporations' (WSCs') requiring connection to their wastewater collection systems; delete the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; readopt requirements for applications for extension of time to sell bonds; repeal or delete unnecessary rules; and correct and clarify the rules.

Further, because this rulemaking is the lead rulemaking to amend §293.11 (concerning information required to accompany applications for creation of districts), it accommodates a separate rulemaking involving groundwater conservation districts (GCDs) under SB 2, Rule Log Number 2001-094- 294-WT (SB 2, Article 2, §§2.22 - 2.57: Groundwater Conservation Districts), by amending §293.11 to exclude GCDs from the scope of §293.11. The separate rulemaking proposes to consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as "Special Requirements for Groundwater Conservation Districts." The proposal for that rulemaking was published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3939).

SECTION BY SECTION DISCUSSION

Section 293.1, Objective and Scope of Rules; Meaning of Certain Words

Adopted §293.1 reflects the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.11, Information Required to Accompany Applications for Creation of Districts

Adopted §293.11 is amended for those districts that provide potable water or sewer service to household users to specify that a petition for creation may include a request for approval of a fire plan, in accordance with SB 1444, Article 23, which amends TWC, §49.351, and to specify associated additional application requirements. Section 293.11 is also amended to reflect that a certificate indicating the owners and tax valuation of land within a proposed district is to be provided by the CAD and not the county tax assessor to reflect the actual practice that this information is provided by the CAD. Section 293.11 is also amended to exclude GCDs from its scope. In separate rulemaking published in the May 10, 2002 *Texas Register* (27 TexReg 3939), the commission proposes to consolidate virtually all aspects of Chapter 293 affecting GCDs into Subchapter C and rename that subchapter as "Special Requirements for Groundwater Conservation Districts." The proposed new name for Subchapter C is used when referring to this subchapter in this rulemaking. Section 293.11(h)(11) is also amended to correct cross-references. Other changes to §293.11 conform it to Texas Register style requirements.

Section 293.42, Submitting of Documents and Order of Review

Adopted §293.42(e) was proposed to be amended to delete the reference to bond applications on file at the time of the effective date of the rules, as sufficient time has passed for all such bond applications to have been processed, and to limit availability of the expedited bond application review process to a district's second and subsequent issues. Commenters objected to the latter proposed revision on the grounds that the high-quality threshold set for applications to qualify for expedited review results in reduced staff processing time and is therefore more efficient. The commission agrees that submittal of complete applications reduces staff review time and should be encouraged. Accordingly, the commission will not adopt the proposed amendment to §293.42(e). However, because the existing text of §293.42(e) is no longer needed, the commission has deleted that subsection.

Section 293.44, Special Considerations; §293.46, Construction Prior to Commission Approval; and §293.47, Thirty Percent of District Construction Costs to be Paid by Developer

The adopted amendment to §293.44(a)(1) conforms a statutory reference to Texas Register style requirements. Sections 293.44(b) and 293.47(d) are adopted with changes to the proposed text in response to comments. Sections 293.46 and 293.47(a) are adopted without changes to the proposed text. Adopted §293.44(b) and §293.47(d) distinguish between developer and non-developer projects regarding district funding of 70% or 100% of the costs of recreational facilities. The amendments implement SB 1444, Article 24, which establishes in TWC, Chapter 49, new Subchapter N, which allows all districts subject to Chapter 49 to fund recreational facilities. Adopted §293.47(g) is amended to clarify the financial guarantee requirement to be consistent with the different types and applicability of financial guarantees.

Section 293.51, Land and Easement Acquisition

Adopted §293.51(e) is amended to correct a reference to the applicable subsection that was changed in a previous rule revision.

Section 293.56, Requirements for Letters of Credit (LOC)

The figure in adopted §293.56(e) is amended to reflect the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.59, Economic Feasibility of Project

Adopted §293.59(k) is amended to reflect that a certificate indicating the valuation of land within a proposed district is to be provided by the CAD and not the tax assessor. The amendment reflects actual current practice that the certificates are provided by the CAD. Section 293.59(l), concerning feasibility requirements for second and subsequent bond issues, is clarified for ease of interpretation without changing the intent.

Section 293.81, Change Orders

Adopted §293.81(1)(A) is amended to allow change orders to construction projects to be issued, in aggregate, up to 10% of the original contract amount. The amendment implements SB 1444, Article 17, which amends TWC, §49.273, to allow districts greater flexibility in issuance of change orders. In response to a comment, the commission has also revised the text of the rule from the proposal to make it more consistent with TWC, §49.273(i).

Section 293.87, Application for Extension of Time to Sell Bonds

The commission readopts §293.87, which establishes the requirements for an application to extend the effective period of the commission's approval of a bond issue. Under §293.45(a), a district must sell bonds within one year of the effective date of the commission's order approving the bonds, unless the executive director (ED) grants an extension of the time to sell bonds. The commission originally adopted §293.87 in 1993. Due to an oversight, however, the text of the rule was not filed with the Secretary of State. To correct that omission, the commission readopts the rule with substantially the same text as was adopted by the commission in 1993.

Section 293.89, Contract Tax Obligations

Adopted §293.89(a) is amended to reflect that a district is not required to obtain commission approval of contract taxes levied by a district to pay for its share of bonds issued by a municipality. The amendment implements HB 2994 and SB 1444, Article 7, which amends TWC, §49.108, and HB 2912, §20.02 and SB 2, §2.58, which amend TWC, §51.149, to allow for certain contract tax obligations to be exempt from commission review. Additional amendments to subsections (a) and (b) conform the rules to Texas Register style requirements. Subsection (c), relating to contract tax obligations, is amended to clarify the applicability of the commission's feasibility rules in §293.59.

Section 293.103, Form of Notice for Name Change

The figure in adopted §293.103 is amended to reflect the agency name change from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality. The effective date of district's name change in the example in the figure was also changed.

Section 293.113, District and Water Supply Corporations Authority Over Wastewater Facilities

Adopted new §293.113 is added to describe when a district or WSC can prohibit on-site wastewater facilities, what a district or WSC is required to do if it prohibits such facilities, and to establish requirements concerning reimbursement of wastewater collection facility costs to connect to a district or WSC's system. The new section implements SB 1444, Article 15, which amends TWC, §49.234 to grant districts and WSCs authority over installation of private on-site wastewater facilities and requires districts and WSCs to reimburse certain centralized wastewater collection system costs if private on-site facilities are prohibited.

Section 293. 121, Approval of Fire Department Projects

Section 293.121 is repealed. In a concurrent rulemaking that appears in this issue of the *Texas Register*, the commission is adopting an amendment to §50.131 to delegate to the ED authority to approve fire plans on behalf of the commission. That amendment is adopted to implement SB 1444, Article 8, which amended TWC, §49.351 to delete the requirement that the commission hold a hearing on an application for approval of a fire plan. An effect of eliminating the hearing requirement in TWC, §49.351 is to enable the commission to delegate approval of fire department plans to the ED. As a result of the amendment to §50.131, the provisions in §293.121 concerning the responsibilities of the commission and the ED with respect to fire plans are no longer needed.

Section 293.123, Application Requirements for Fire Department Plan Approval

Adopted §293.123 is amended by deletion of the requirement that a district provide evidence of a hearing, in which any person residing in a district could present testimony for or against the proposed fire plan and/or any associated contract, with other application materials. The amendment implements SB 1444, Article 8, which amended TWC, §49.351 to delete the requirement to hold a hearing.

Section 293.171, Definitions of Terms

Adopted §293.171 is amended by adding paragraph (1)(C) to reflect that a district is not required to obtain commission approval of charges or fees for retail or wholesale service on land that at the time of platting was not being provided with water or wastewater service by the district. The amendment implements SB 1444, Article 12, which amends TWC, §49.212 to exempt certain fees charged by a district from commission review. Other changes to §293.171 clarify the rule.

Section 293.201, District Acquisition of Road Utility District Powers

Adopted §293.201(a) is amended to change the name of the agency from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 293.202, Application Requirements for Commission Approval

Adopted §293.202 is amended to change the name of the agency from Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality, effective September 1, 2002.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules concern commission administration and oversight of water districts and WSCs and their allowable activities, including requirements applicable to financial instruments such as bonds. The rules incorporate new legislative requirements and provide for regulatory consistency. The rules will not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Further, this rulemaking does not meet the applicability criteria of a "major environmental rule" because the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Specifically, the adopted rules do not exceed a standard set by federal law nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the rulemaking. The rules are not adopted solely under the general rulemaking authority of the commission but also under TWC, §§5.122, 49.234, 49.351, and Texas Local Government Code, §395.080, and were specifically developed also to implement TWC, §§36.011, 36.013, 36.015, 49.108, 49.181, 49.212, 49.273, Chapter 49, Subchapter N, §51.149, §54.014, and HB 2912, §18.01, 77th Legislature, 2001, and the adopted rules do not exceed the express requirements of those state statutes.

TAKINGS IMPACT ASSESSMENT

The commission performed a assessment of the adopted rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement applicable requirements of SB 2, SB 1444, HB 2994, and HB 2912, 77th Legislature, 2001, concerning commission administration and oversight of water districts, and correct and clarify the rules. The adopted rulemaking would advance this specific purpose by allowing a fire plan to be approved at the time of district creation; requiring certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; adding provisions to allow districts to fund costs related to recreational facilities; modifying provisions for allowable change orders; readopting requirements for applications for extension of time to sell bonds; providing additional exemptions from having to obtain commission approval of contract tax obligations and impact fees; adding provisions regarding districts and WSCs' requiring connection to their wastewater collection systems; deleting the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; repealing or deleting unnecessary rules; and clarifying certain rules. Promulgation and enforcement of these rules will not burden private real property because the actions that are required by the rulemaking relate primarily to administration of water districts by the commission including requirements applicable to financial instruments such as bonds. Private real property is not subject to these rules. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and found that the rulemaking identified in the Act's Implementation Rules, 31 TAC §505.11(b), relating to Actions and Rules Subject to the Coastal Management Program, or may affect an action/authorization identified in §505.11(a)(6), and, therefore, requires that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission determined that the adopted rules are included under 31 TAC §505.22 and found that the adopted rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the adopted rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. While these adopted rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section §505.11 provides the actions and rules that are subject to the CMP. Among the list is the creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers. As the adopted rules will be effective throughout the state, the CMP policy is applicable. CMP policies applicable to the adopted rules include the administrative policy requiring applicants to provide information necessary for an agency to make an informed decision on a proposed action listed in §505.11 and the standards related to the development of infrastructure on coastal barriers set out in 31 TAC §505.14(m).

The adopted rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the adopted rules is to adopt new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 36, 49, 51, 54, 55, 58, 59, and 65, particularly as amended by SB 2, SB 1444, HB 2994, and HB 2912, 77th Legislature, 2001. The rules will substantially advance this specific purpose. Specifically, the adopted rules would allow a fire plan to be approved at the time of district creation; require certificates of land ownership and value to be provided by a CAD in lieu of the county tax assessor; add provisions to allow districts to fund costs related to recreational facilities; readopt requirements for applications for extension of time to sell bonds; modify provisions for allowable change orders; provide additional exemptions from having to obtain commission approval of contract tax obligations and impact fees; add provisions regarding districts and WSCs' requiring connection to their wastewater collection systems; delete the requirement that a district provide evidence that it has held a hearing when seeking approval of a fire plan; repeal or delete unnecessary rules; and correct and clarify the rules.

Promulgation and enforcement of these adopted rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not alter the allowable location, standards, or stringency of the requirements for infrastructure on coastal barriers.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The commission received written comments from the following five organizations: Akin, Gump, Strauss, Hauer & Feld, L.L.P. (Akin-Gump); Vinson & Elkins (V & E); Houston Real Estate Council (HREC);

Pate Engineers (Pate); and Association of Water Board Directors-Texas (AWBD-Texas).

RESPONSE TO COMMENTS

Section 293.42 - Submitting of Documents and Order of Review

V & E commented that the expedited review process for bond applications is beneficial and should be retained in its current form because it results in higher quality applications and reduces commission staff time in reviewing a bond application. V & E also argued that first bond issues are the best candidates for expedited review because the feasibility analysis is simpler. V & E urged, therefore, that the proposed revision to exclude first bond issues from the expedited process be deleted. HREC concurred with V & E's comments and, in addition, commented that the expedited review process has provided efficiencies and should not be limited. Pate Engineers and AWBD-Texas commented that the expedited review process for bond applications requires a district to spend more time preparing an application, saves commission staff time in reviewing an application, and provides other benefits and that the proposed revision to exclude first bond issues from the expedited process should therefore be deleted.

RESPONSE

The commission concurs that first bond issues should be retained as part of the expedited review process. Accordingly, first bond issue applications will not be excluded as originally proposed. Commission staff will continue to work with the regulated community to insure that high quality expedited review applications are submitted. Because the existing text in §293.42(e) is no longer needed, the commission is deleting that subsection.

Section 293.44 - Special Considerations; specifically as regards Recreational Facilities; §293.46 - Construction Prior to Commission Approval; §293.47 - Thirty Percent of District Construction Costs To Be Paid by Developers

Akin-Gump commented that recreational facilities should not be subject to a 30% developer contribution requirement, and that the rules should be modified to allow 100% funding to encourage construction of recreational facilities. V & E commented that in practice recreational facilities are not developer projects, that the funding of recreational facilities is initiated by district residents in completely, or nearly completely, built-out districts, and that no changes to §§293.44, 293.46, and 293.47 should be made regarding recreational facilities because these facilities are not generally financed with bonds. HREC commented that the vast majority of recreational facilities projects in the Houston area are resident-driven, and expressed opposition to any effort to require developers to contribute toward recreational facilities. Pate Engineers and AWBD-Texas commented that proposed §293.47(d)(12) should be deleted because developers may not benefit from improvements and because developed districts can already receive an exemption to the 30% developer participation requirement under a ten to one debt to assessed valuation ratio.

RESPONSE

The commission disagrees with the comment that no changes should be made to the bond rules with respect to recreational facilities. The applicable statutes allow districts to finance recreational facilities with revenue bonds, which are generally subject to commission review. The commission does agree that the bond rules concerning recreational facilities should clearly distinguish between developer and non-developer projects. The commission recognizes that in certain parts of the state the existing situation may be that well established districts initiate recreational facilities, without the involvement of a developer. However, the commission also anticipates that even though in the past developers were not reimbursed for recreational facilities, the revisions to the TWC may encourage developers to seek reimbursement from districts for recreational facilities. Commission staff has received inquiries about districts reimbursing developers for recreational facilities, and a bond application has been filed, which includes funding of recreational facilities. Further, districts will have the option to reimburse 100% of the costs if requirements under §293.47 are met, similar to what is available for water, wastewater, and drainage facilities. Sections 293.44 and 293.47 have been revised to distinguish between developer reimbursement and district initiated projects.

Section 293.81 - Change Orders

V & E commented that the wording of the rule regarding eligibility of change orders should be modified to reflect TWC, §49.273, and that modifications should be made to the change order rules regarding when commission approval is needed. HERC concurred in these comments.

RESPONSE

The commission agrees with the proposed change to §293.81(1) to reflect a reference to the original contract price, which is consistent with TWC, §49.273(i). However, 293.81(1) is not modified to delete the word "only" because the word "only" reflects wording in TWC, §49.273(i). Revisions to §293.81(2) or (3) are beyond the scope of the current rulemaking and are more appropriately addressed in a future rulemaking.

Section 293.89 - Contract Tax Obligations

Pate and AWBD-Texas commented that contract tax applications should only be subject to the combined projected and combined no-growth tax rate limits in the commission's feasibility rules (§293.59) because some portions of the feasibility rules are appropriate for bonds, but not for contract taxes and could put a district in a "catch 22" situation by requiring, for example, a district to have installed central water capacity prior to seeking commission approval in a circumstance where a contract tax to fund such installation cannot be executed until approved by the commission.

RESPONSE

The commission has made no change to the proposed text in response to these comments. The current rule addresses the varied contract tax applications that could be submitted and the proposed revision gives an applicant the option to request a waiver of feasibility rules provisions for good cause.

Other Comments

V & E, HERC, and Pate commented that an expedited process for district creation applications should be established.

RESPONSE

This proposal is beyond the scope of this rulemaking. However, the commission agrees that an expedited review process for district creation applications merits study and may be an appropriate subject for a future rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.11 and §293.123 and the repeal of §293.121 are also adopted under TWC, §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval. New §293.113 is also adopted under TWC, §49.234, as added by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules concerning the reimbursement of the costs to connect to a district's or WSC's wastewater system under certain circumstances where the district or corporation has prohibited the installation of private on-site wastewater facilities. The repeal of §293.121 is also adopted under TWC, §5.122, which provides that the commission may adopt rules to delegate to the ED the authority to act on uncontested matters. The amendment to §293.171 is also adopted under Texas Local Government Code, §395.080(b), which requires the commission to adopt rules for reviewing petitions for approval of district impact fees.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

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

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

TRD-200206021
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval and allows a fire plan to be considered at the same time as an application for district creation.

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 16, 2002.

TRD-200206022
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.42, 293.44, 293.46, 293.47, 293.51, 293.56, 293.59

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.42. Submitting of Documents and Order of Review.

(a) Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

(b) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 60 calendar days following submission of the application. In order to qualify for this expedited review, the applicant must submit a bond application that complies with §293.43 of this title (relating to Application Requirements). The district's bond counsel, engineer, and financial advisor must also sign a certificate which is worded as shown on the form provided by the executive director. The certificate must state that the district's bond counsel, engineer, and financial advisor have reviewed the bond application, that the application is accurate and complete, that the application includes specific documents identified on the form, and that the district's financial status has reached the thresholds provided in §293.59 of this title (relating to Economic Feasibility of Project) as shown by its existing assessed valuation and completion of facilities. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. A bond applicant that seeks conditional approval on the basis of receiving an acceptable credit rating or credit enhanced rating as provided in §293.47(b)(4) and (5) and (c) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) may qualify for expedited review. A bond applicant that seeks approval on the basis of a ratio of debt to certified assessed valuation of 10% or less must provide evidence of that ratio as provided in §293.47(b)(3) of this title to qualify for the expedited review.

(c) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 45 calendar days following submission of the application. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. In order to qualify for this expedited review, the applicant must submit a bond application that includes all of the items listed in §293.43 of this title and the following:

(1) a certificate signed by the district's president, engineer, financial advisor, and bond counsel, which is worded as shown on the form provided by the executive director, which states that less than 20% of the total land area in the district is undeveloped with underground facilities, that the facilities contained in the bond application are for water plant facilities, wastewater treatment plant facilities, major lines to or between such facilities, remote water wells, or for any improvement necessary to serve development in the district as described in §293.83(c)(3) of this title (relating to District Use of Surplus Funds for any Purpose and Use of Maintenance Tax Revenue for Certain Purposes), that no funds are being expended for developer facilities as described in §293.47(d) of this title and no funds are being used to reimburse a developer as described in Texas Water Code, §49.052(d), that the district expects to have a no-growth tax rate of $0.75 or less calculated in accordance with §293.59(d) of this title after issuance of the proposed bonds, and that the district is legally authorized to issue the bonds;

(2) a debt service schedule and related cash flow schedule showing a no-growth tax rate as defined in §293.59(d) of this title of $0.75 or less; and

(3) a certificate of assessed valuation or estimated assessed valuation as defined by §293.59(d) of this title reflecting a value sufficient to support the no-growth tax rate in paragraph (2) of this subsection.

(d) A bond application that does not qualify for an expedited review pursuant to subsection (b) or (c) of this section may not become eligible for expedited review unless the applicant requests withdrawal of the pending application in writing and resubmits the filing fee and completed certificate in accordance with subsection (b) or (c) of this section. For the purposes of this subsection, a new receipt date will be assigned and the time requirements of subsection (b) and (c) of this section shall commence upon the date of submission of the signed certificate.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project which provides water, wastewater or drainage service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted pursuant to paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity which provides adequate payment to the district to pay the cost of financing, operating and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user, and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information

that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title.

(11) Land planning, zoning and development planning costs should not be paid by the district, except for conceptual land use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off-site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing;

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursable and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district;

(D) provided, however, that the foregoing limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows:

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which includes periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five year period for which application is made pursuant to this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable and customary and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer which compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal stormwater permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal stormwater permit" means a permit for stormwater discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by EPA and Texas Pollutant Discharge Elimination System permits issued by the commission.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility less repairs and depreciation taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, pursuant to contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain water or sewer service from a municipality, district, or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or providing entity has adopted a uniform service plan for such water and sewer services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract which will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions which could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in TWC, §49.462, for all affected districts and as also defined in TWC, §54.772, for municipal utility districts, that benefit persons within the district. If financing involves reimbursement to a developer of property in the district, as defined by TWC, §49.052(d), the district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. Otherwise, a district's financing of costs associated with recreational facilities shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a).

§293.47. Thirty Percent of District Construction Costs to be Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, wastewater, drainage, and recreational facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to all districts except:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections upon which the feasibility is based or to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof;

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the executive director, in his discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution; or

(4) a district which has entered into a strategic partnership agreement, interlocal agreement, or other contract with a political subdivision or an entity created to act on behalf of a political subdivision under which the political subdivision or other entity has agreed to provide sales and use taxes or other revenues generated by a project to the district as consideration for the district's development or acquisition of water, wastewater, and drainage facilities and:

(A) water, sewer, drainage, and street and road construction are complete in accordance with §293.59(k)(6)(A) - (E) of this title (relating to Economic Feasibility of Project);

(B) the projected value of houses, buildings, and/or other improvements are complete in accordance with §293.59(k)(7) of this title;

(C) the district can demonstrate a history of revenue generated by the project;

(D) the district's projected ad valorem tax rate necessary to amortize the district's debt at the district's current assessed valuation after accounting for the contract payments pledged to the district's debt would be equal to or less than the projected ad valorem tax rate for a district with an assessed valuation sufficient to qualify under paragraph (1) of this subsection; and

(E) the district's combined no-growth tax rate does not exceed the amounts prescribed in §293.59(k)(11)(C) of this title.

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Texas Water Code (TWC), §49.052(d);

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily canceled), all bonds of the district approved by other entities which are exempt from commission approval and not yet sold, all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). If more than one application for approval of project and bonds is pending, the ratio of debt to value shall be calculated consecutively with respect to each application in the order of filing of each application. For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) the principal amount of the bond anticipation notes;

(B) the accrued interest thereon; and

(C) all bond issuance costs relating to the refunding of such bond anticipation notes, including capitalized interest.

(3) Certified assessed valuation is a certificate provided by the central appraisal district in which the district is located either certifying the actual assessed valuation as of January 1, or estimating the assessed valuation as of any other date.

(4) Acceptable credit rating is a rating of Baa3 or higher from Moody's Investors Service, Inc., or BBB- or higher from Standard and Poors Corporation or BBB- or higher from Fitch IBCA, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc. or AA or higher from Standard and Poors Corporation, or AA or higher from Fitch IBCA, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall be unconditional, irrevocable, and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission, which request shall specifically state on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the district obtaining an acceptable credit rating, a credit enhanced rating, or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold with an enhanced credit rating and finding the financing to be feasible without the developer contribution.

(5) Upon request by the district, the commission order approving a bond issue without developer contribution may authorize an alternative amount of bonds to be issued with developer contribution in the event compliance with subsection (a) of this section is not achieved. Such order may contain other conditions otherwise applicable to a bond issue requiring developer contribution.

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30% of the construction costs for all water, wastewater, drainage, and recreational facilities, including attendant engineering fees and other related expenses, with the following exemptions:

(1) wastewater treatment plant facilities, including site costs;

(2) water supply, treatment and storage facilities, including site costs;

(3) stormwater pump stations associated with levee systems, including site costs;

(4) that portion of water and wastewater lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;

(5) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional trunkline or a regional plant, regardless of whether such line or plant is located within or without the boundaries of the district;

(6) segments of water transmission or wastewater trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) water and wastewater lines serving or programmed to serve 1,000 acres or more within the district;

(8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects. Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;

(9) land costs for levees or stormwater detention facilities; and

(10) alternate water supply interconnects between a district and one or more other entities.

(11) lease payments for central plant capacity not included in operating expenses; and

(12) the district's financing of recreational facilities costs that do not involve reimbursement to a developer of property in the district as defined by TWC, §49.052(d).

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

(1) facilities that were completed or under construction as of December 1, 1986;

(2) districts previously created or in the process of creation which, prior to December 1, 1986, have submitted petitions to the executive director requesting creation; or

(3) districts that are providing facilities and services on behalf of, in lieu of, or in place of the city and which have contracted with the city to receive rebates of 65% or more of the city taxes actually collected on property located within the district.

(f) The developer's contribution toward construction cost shall be reduced by the amount that the developer is required by a city, state, or federal regulatory agency to pay toward costs that are otherwise eligible for district financing.

(g) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the financial guarantee to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit (LOC)), must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) Actual payment of funds for the district's construction project shall be made by the developer to the district within 10 days following the developer's receipt of billing. The developer's applicable share will be adjusted by the overruns or underruns on developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(i) The district (or district engineer) shall forward to the commission's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements and/or other adequate documentation reflecting payment of the developer's required contribution to construction and engineering costs.

(j) A district may submit other information and data to demonstrate that all or any part of this section should not apply and/or request that it be waived.

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by §293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

§293.56. Requirements for Letters of Credit (LOC).

(a) Any LOC submitted as a financial guarantee for combined amounts greater than $10,000 and less than $250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

(A) Must be federally insured;

(B) Sheshunoff rating must be ten or better; and

(C) Total assets must be at least fifty million dollars.

(2) Qualifications for Savings and Loan Associations.

(A) Must be federally insured; and

(B) Tangible capital must be at least:

(i) 1.5% of total assets if total assets are fifty million dollars or more; or

(ii) Tangible capital must be at least 3.0% of total assets if total assets are less than fifty million dollars; and

(C) Sheshunoff rating must be 30 or better.

(b) Any LOC submitted as a financial guarantee for combined amounts greater than $250,000 pursuant to these rules must be from financial institutions which meet the following qualifications:

(1) Qualifications for Banks.

(A) Must be federally insured;

(B) Sheshunoff rating must be 30 or better; and

(C) Total assets must be at least seventy-five million dollars.

(2) Qualifications for Savings and Loan Associations.

(A) Must be federally insured;

(B) Tangible capital must be at least:

(i) 3.0% of total assets and total assets must be seventy-five million dollars or more; or

(ii) Tangible capital must be at least 5.0% of total assets if total assets are less than seventy-five million dollars; and

(C) Sheshunoff rating must be 30 or better.

(c) All LOC's must be valid for a minimum of one year from the date of issuance and if the aggregrate amount of the LOC is $100,000 or more, the LOC shall be held and administered in an account for the benefit of the district by a bank corporate trust department. The district shall authorize the agent to administer all draws on the letter of credit including a final draw prior to the LOC expiration date if the letter of credit is:

(1) not renewed for an additional year at least 45 days prior to its date of expiration;

(2) not called upon in its entirety at least 30 days prior to its date of expiration;

(3) not found to be unnecessary by the commission at least 45 days prior to its date of expiration; or

(4) no longer required because the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

(d) Should the financial institution or agent deposit funds in an account in the name of the district, the district shall not commit or expend such funds until it has received written authorization from the executive director.

(e) All LOC's required pursuant to these rules must be approved by the commission staff.

(f) Form of letter of credit. The following form shall be used as a letter of credit for the financial guarantee for utilities construction and/or construction and paving of streets.
Figure: 30 TAC §293.56(f)

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

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

TRD-200206023

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §§293.81, 293.87, 293.89

STATUTORY AUTHORITY

The amendments and readoption are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.81. Change Orders.

A change order is a change in plans and specifications for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders subject to the following conditions.

(A) Except as provided in this subparagraph, change orders, in aggregate, shall not be issued to increase the original contract price more than 10%. Additional change orders may be issued only in response to:

(i) unanticipated conditions encountered during construction;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(2) No commission approval is required if the change order is $25,000 or less. If the change order is more than $25,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed $25,000, even though the net change in the contract price will be $25,000 or less, approval by the executive director is required.

(3) If the change order is $25,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution

or letter signed by the board president indicating concurrence in the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of $100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application 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 16, 2002.

TRD-200206024
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER I. DISTRICT NAME CHANGES AND POSTING SIGNS

30 TAC §293.103

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.103. Form of Notice for Name Change.

The following form may be used to provide notice of a name change pursuant to §293.102(c) of this title (relating to District Name Change):
Figure: 30 TAC §293.103

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 16, 2002.

TRD-200206025
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER J. UTILITY SYSTEM RULES AND REGULATIONS

30 TAC §293.113

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.234, as added by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules concerning the reimbursement of the costs to connect to a district's or WSC's wastewater system under certain circumstances where the district or corporation has prohibited the installation of private on-site wastewater facilities.

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 16, 2002.

TRD-200206026
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER K. FIRE DEPARTMENT PROJECTS

30 TAC §293.121

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; §5.122, which provides that the commission

may adopt rules to delegate to the ED the authority to act on uncontested matters; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval.

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 16, 2002.

TRD-200206027
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

30 TAC §293.123

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and §49.351, as amended by SB 1444, 77th Legislature, 2001, which requires the commission to adopt rules under which fire plans will be considered for approval.

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 16, 2002.

TRD-200206028
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER N. PETITION FOR APPROVAL OF IMPACT FEES

30 TAC §293.171

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and Texas Local Government Code, §395.080(b), which requires the commission to adopt rules for reviewing petitions for approval of district impact fees.

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

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

TRD-200206029
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

SUBCHAPTER P. ACQUISITION OF ROAD UTILITY DISTRICT POWERS BY MUNICIPAL UTILITY DISTRICT

30 TAC §293.201, §293.202

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

§293.201. District Acquisition of Road Utility District Powers.

(a) Texas Transportation Code, Chapter 441, authorizes a district operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes to petition the Department of Transportation, after first obtaining approval of the Texas Commission on Environmental Quality, effective September 1, 2002, to acquire the powers granted under said Texas Transportation Code, Chapter 441, to road utility districts. Texas Transportation Code, §441.051 requires the written consent of the landowners within the boundaries of the district to be given to the governing board of the district to file a petition with the Department of Transportation.

(b) Authority to add road utility district powers is also given to municipal utility districts in Chapter 951, Acts of the 69th Legislature, 1985, which added §54.234 and §54.235 to the Texas Water Code. This section and §293.202 of this title (relating to Application Requirements for Commission Approval) of this chapter will provide the requirements for obtaining approval of the commission to petition the Texas Department of Transportation for road utility district powers.

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 16, 2002.

TRD-200206030
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 239-6087

CHAPTER 305. CONSOLIDATED PERMITS

SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

30 TAC §§305.501 - 305.507

The Texas Commission on Environmental Quality (commission) adopts the repeal of Subchapter M, Waste Treatment Inspection Fee Program, §§305.501 - 305.507 *without changes* as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3512), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The rulemaking will repeal the existing WTF program provisions. These provisions with changes will be moved to and adopted concurrently in this issue of the *Texas Register* new 30 TAC Chapter 21, Water Quality Fees.

SECTION BY SECTION DISCUSSION

Sections 305.501 - 305.507 are repealed because the WTF program has been revised as a result of HB 2912, §§3.04 - 3.06. The fees for this program are adopted in new Chapter 21.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to repeal rules which must be revised as a result of HB 2912, §§3.04 - 3.06 because the WTF is now part of the water quality fee which will be in new Chapter 21.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to repeal rules which were contained in Chapter 305 that became obsolete as a result of HB 2912, §§3.04 - 3.06. The repeal of these rules will not burden private real property because these rules will no longer be used. The rules did not affect private real property, nor does the repeal of these rules affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the repeals and found that they are identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or would affect an action/authorization identified in §505.11(a)(6), and would, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeals are consistent with CMP goals and policies; would not have a direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the repeals would not violate (exceed) standards identified in the applicable CMP goals and policies. This rulemaking repeals fee rules which are procedural mechanisms for paying for commission programs.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on May 21, 2002, in Austin. The comment period closed on May 28, 2002. No comments on the repeals in this chapter were received. However, the substantive comments received on this rulemaking have been addressed in the RESPONSE TO COMMENTS section in the new Chapter 21, which is published concurrently in this issue of the *Texas Register*.

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §26.0291, which establishes an annual water quality fee on wastewater permit holders and water right holders.

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 16,

2002, 2002.

TRD-200206036
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 6, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 239-6087

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER K. LICENSE STANDARDS

31 TAC §53.100

The Texas Parks and Wildlife Commission adopts new §53.100, concerning License Format and Legibility, without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6236).

The new rule is necessary in order to comply with provisions in Senate Bill 305, 77th Legislative Session, which directs the agency to adopt rules to specify standards for licenses, including legibility of licenses.

The rule will function by establishing a prescriptive standard for the quality and legibility of licenses issued by the department.

The department received no comments regarding adoption of the proposed rule.

The new section is adopted under Parks and Wildlife Code, §12.703, which requires the commission to specify standards for licenses, including legibility of the license.

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 17, 2002.

TRD-200206070
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: October 7, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 1. GENERAL PROVISIONS

31 TAC §65.7

The Texas Parks and Wildlife Commission adopts an amendment to §65.7, concerning Harvest Log for Deer, with changes to the proposed text as published in the July 19, 2002, issue of the *Texas Register* (27 TexReg 6490). The change adds language to clarify that only red drum in excess of the maximum length limit are required to be logged.

The amendment is necessary in order to accommodate regulatory ramifications associated with the potential implementation of an alternative licensing system should the department's automated licensing system become inoperable. As a matter of expedience and simplicity, the alternative license will not be accompanied by the traditional deer, turkey, and red drum tags. In order to preserve the enforcement and resource documentation function of tags, hunters and anglers using the tagless license will be required to complete a license log and a wildlife resource document.

The amendment functions by requiring a license log to be completed by a hunter upon the take of mule deer, turkey, or red drum in excess of maximum length limits, as well as for white-tailed deer, in the event that the department's automated licensing system is inoperable.

The department received no comment concerning adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate by rule the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in that chapter, §46.0086, which authorizes the commission to modify or eliminate the requirements of that section by rule, and Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.7. Harvest Log.

(a) The provisions of this subsection apply only to a person in possession of a license purchased through an automated point-of-sale system.

(1) A person who kills a white-tailed deer shall complete, in ink, the harvest log on the back of the hunting license immediately upon kill.

(2) Completion of the harvest log is not required for deer taken under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) and/or provisions of §65.29 of this title (relating to Bonus Tags).

(b) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(1) A person who takes a white-tailed deer, mule deer, Rio Grande turkey, Eastern turkey, red drum in excess of the maximum length limit, or tarpon shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(2) Completion of the harvest log is not required for deer taken under the provisions of §65.27 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 17, 2002.

TRD-200206072
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: October 7, 2002
Proposal publication date: July 19, 2002
For further information, please call: (512) 389-4775

31 TAC §65.8

The Texas Parks and Wildlife Commission adopts new §65.8, concerning Alternative Licensing System, with changes to the proposed text as published in the July 19, 2002, issue of the *Texas Register* (27 TexReg 6490). The change stipulates that deer, turkey, red drum in excess of the maximum length limit,

and tarpon taken under a tagless license must be accompanied by a wildlife resource document.

The new section is necessary in order to accommodate regulatory ramifications associated with the potential implementation of an alternative licensing system should the department's automated licensing system become inoperable, and to modify the tagging requirements contained in the Parks and Wildlife Code in order to accommodate the issuance of tagless licenses, which must be done by rule. As a matter of expedience and simplicity, the alternative license will not be accompanied by the traditional deer, turkey, and red drum tags. In order to preserve the enforcement and resource documentation function of tags, hunters and anglers using the tagless license will be required to complete a license log and a wildlife resource document.

The new section functions by allowing the executive director to implement an alternative system for license issuance in the event that the department's automated licensing system is inoperable, by setting forth the documentation required in lieu of license tags, and by modifying the tagging requirements of Parks and Wildlife Code, Chapter 42.

The department received no comments concerning adoption of the proposed rule.

The new section is adopted under the authority of Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate by rule the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in that chapter, §46.0086, which authorizes the commission to modify or eliminate the requirements of that section by rule, and Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

§65.8. Alternative Licensing System.

(a) The tagging requirements of Parks and Wildlife Code, §§42.018, 42.0185, 42.020, and 46.0086 do not apply to any person in lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, turkey, red drum, or tarpon.

(b) The requirements of this subchapter that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, turkey, red drum, or tarpon. A properly executed wildlife resource document must accompany any white-tailed deer, mule deer, turkey, red drum in excess of maximum size limits, or tarpon until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(c) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

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 17, 2002.

TRD-200206073

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: October 7, 2002
Proposal publication date: July 19, 2002
For further information, please call: (512) 389-4775

♦ ♦ ♦

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.602, §65.608

The Texas Parks and Wildlife Commission adopts amendments to §65.602 and §65.608, concerning Scientific Breeder's Permits, without changes to the proposed text as published in the July 19, 2002, issue of the *Texas Register* (27 TexReg 6492).

In general, the amendments are necessary to protect native deer in Texas from Chronic Wasting Disease, a disease that has been detected in wild deer in other states. The Texas Parks and Wildlife Department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department strongly believes that vigilance, early detection, and prudent safeguards to prevent the spread of CWD are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the implementation of reasonable rules to prevent the spread of the disease if in fact it is present in Texas is warranted. At the present time, regulations promulgated by the Texas Animal Health Commission are deemed by the department to be sufficiently stringent to prevent the importation of diseased cervids into the state. Therefore, the department proposes to lift the temporary suspension on importation of deer.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, is necessary in order to ensure to the greatest extent possible that only disease-free animals are introduced amidst wild populations of native deer. The amendment to §65.608, concerning Annual Reports and Records, is necessary for the department to determine as accurately as possible the total number of deer within a facility, which enables the department to determine that all deer within a facility are accounted for each year.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, requires permittees to obtain written approval from the department prior to the release of scientific breeder deer to the wild. The amendment to §65.608, concerning Annual Reports and Records, requires scientific breeders to report the number of fawns produced each year within each facility.

The department received three comments concerning adoption of the proposed amendments.

One commenter opposed adoption for the following reasons: 1) the rules as proposed did not require deer to be tested for Chronic Wasting Disease and tuberculosis on state parks and wildlife management areas, 2) the rules did not require scientific breeder deer to be physically inspected prior to release, 3) the proposed definition of 'healthy condition' had already been adopted at a previous commission meeting, and 4) the term 'healthy' is ambiguous. The department disagrees with the

comments and responds that 1) a sample of animals taken from state parks and wildlife management areas will be tested as part of the department's detection protocol, 2) a definitive diagnosis of CWD is not possible by means of physical inspection, and the authorization to release deer will be only on the basis of acceptable provenance, 3) the commenter is possibly confused, since the commission deferred action at a previous meeting on the section in question, and at any rate, the section was not adopted, and 4) the term 'healthy' is not ambiguous, since it is defined within the context of Texas Animal Health Commission accreditation levels, but, again, the sections implementing the definition were not adopted by the commission. No changes were made as a result of the comment.

Texas Wildlife Association and Texas Deer Association commented in support of the rules as adopted.

The amendments are adopted under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

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 17, 2002.

TRD-200206074
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: October 7, 2002
Proposal publication date: July 19, 2002
For further information, please call: (512) 389-4775

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 363, Financial Assistance Programs. The board adopts amendments to §§363.601-363.604, the repeal of §363.613, and new §§363.1001-363.1017, concerning the Storage Acquisition and State Participation Programs. Section 363.1007 is adopted with change to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3712). The amendments to §§363.601-363.604, the repeal of §363.613, and new §§363.1001-363.1006 and §§363.1008-363.1017 are adopted without change and will not be republished.

The amendments remove references to the State Participation Program from Subchapter F which will be renamed the Storage Acquisition Program. New §§363.1001-363.1017 will comprise new Subchapter J, State Participation Program. The new sections incorporate statutory and constitutional authority recently enacted. Additionally the new sections create a priority ranking system in order to be prepared for the circumstance of multiple funding requests which exceed the amount of available funding.

The amendments to Subchapter F are intended to clarify those requirements relating specifically to the Storage Acquisition Program, which provides for state ownership in projects through a general revenue financial program and to remove provisions which relate specifically to the State Participation Program, which provides for state ownership in projects through a bond-financed program. The amendments remove references to the State Participation Program from the subchapter title, and from §§363.601-363.604. Section 363.613, relating to Administrative Cost Recovery for State Participation Program, is repealed because it applies to the State Participation Program and is not applicable to the Storage Acquisition Program.

New §363.1001 and §363.1002 are adopted to define the purpose of new Subchapter J and to define necessary terms. Section 363.1002 is adopted without change from the language previously adopted in Subchapter F, and thus, does not change the program requirements. Pursuant to the additional authority provided in the Constitution of the State of Texas, Art. 3, §49-d-9 and Texas Water Code §16.136, which removes a restriction on the board funding more than 50% of proposed projects, the board adopts new §363.1003, Board Participation. New §363.1003 provides that the board may fund up to the total cost of the excess capacity in a project, provided that at least 20% of the total facility capacity will serve existing need, or that the applicant is willing to finance at least 20% of the total project cost from sources other than the board's State Participation Account. The board currently does not use its state participation program or storage acquisition program to participate in the cost of serving existing needs. Existing need is defined under current rule as well as the proposed rule as the capacity necessary to serve an area's estimated population for ten years after the date of the application. The board continues to believe that ten years is an appropriate time period for which a state participation program applicant should be responsible for serving growth within its service area. It is the board's experience that most service providers should and do manage water and wastewater systems and their associated rates so that service will be reasonably provided for their current service population and a minimum of ten years growth without assistance from the state and because of the necessity of fixing some known time period for the purpose of calculating the debt service obligations associated with the debt incurred by the state to make the state participation funds available. Concurrently, the board has implemented a 50-year period in the State Water Plan process as the appropriate planning horizon time period for which the state determines its future needs. The board recognizes the 50-year planning horizon as an appropriate time period for which each potential state participation applicant should be determining the growth potential within its boundaries and therefore the future needs of its service area. It is the intention of the board to apply the ratio of existing need, as defined by the current and proposed rule, to future need, as determined for the 50-year planning period, to the total project cost to establish the maximum of financial assistance available from the state participation account for each project. Requiring applicants to assume the 20% of project costs is consistent with the board's current policy regarding existing need, since the board does not participate in the cost of existing needs under the current policy. Allowing applicants with projects in which at least 20% of the total facility capacity does not serve existing need to finance at least 20% from sources other than the State Participation Account provides the board with the flexibility to fund such projects while still keeping the state's monetary investment near or below 80% in any particular project.

New §363.1004, Application for Assistance, is adopted to specify information required to be submitted by applicants in order to have a complete application. Section 363.1004 is adopted without change from the language previously adopted in Subchapter F, and thus, does not change current program requirements. New §363.1005, Approval of Engineering Feasibility Report, specifies the procedures by which the executive administrator will approve engineering feasibility reports. Section 363.1005 is adopted without change from the language previously adopted in Subchapter F, and thus, does not change current program requirements. New §363.1006, Priority Rating System, is adopted to establish a priority rating system for proposed projects. Applications for state participation will be considered by the board in March and October of each year, and must be received at least 45 days before such board meetings. Time deadlines were important to allow a comparison of applications. The board selected the March and October meetings because there is typically not a large volume of applications during these months due to application cycles relating to other board programs. This will allow a more even distribution of the board's overall workload. The executive administrator will rate all complete applications based on scoring criteria in §363.1007. If insufficient money is available, projects which the legislature has specified as priority projects will first be considered for funding on the basis of the legislature's assignment of priority to such projects. If funds remain, other projects will be considered according to the score they receive with the highest scored project receiving first consideration.

New §363.1007 is adopted to identify the rating factors and point structure to be used to rate projects seeking financial assistance from the State Participation Account. The first rating criterion provides 2 points to water development projects and 1 point to wastewater projects. Both types of projects are eligible for funding but the board believes that in order to sustain the anticipated growth in the state preference should be given to the development of water projects and therefore deserve greater priority when rating between water and wastewater projects. The second rating criterion provides 2 points for new water supplies developed through conservation or innovative technologies because developing new water supplies is critical to meeting the needs of a growing population. Construction of these types of projects can demonstrate their viability and cost effectiveness, which can encourage the use of these techniques and technologies in the future. Therefore a project with this element receives additional points to prioritize these type projects for state funding. The third rating factor relates to projects that have previously received board funding for facility planning, design or permitting. The board believes that giving preference to a project that has already received state funding will serve to maximize the benefits obtained from previously expended public funds. The fourth rating criterion provides additional points for applicants that have developed a program of water conservation. The board believes that it can further encourage implementation of conservation programs by awarding additional points to projects where the applicant has already developed and implemented a conservation program. The fifth criterion awards that portion of a point that equals the percentage of local participation provided for the project. The board believes that local support is critical to the success of projects. Therefore, the board adopts this criterion to encourage the contribution of local funds in order to help insure successful implementation of the project. The final criterion awards that portion of a point that equals the percentage of the total plant capacity that will serve existing need, as defined in this subchapter. The board believes it is appropriate to direct limited state resources toward projects that address urgent public needs. This criterion creates a preference for projects where the facility capacity addresses those urgent needs. Tie scores will be broken by awarding a point to the project having the service area which has the lowest median annual household income, based upon the most current data available from the U.S. Bureau of the Census, for all of the areas to be served by the project. The board believes that it is appropriate public policy to favor areas with the lowest median annual household income in the event of a tie score because such areas may have a greater relative economic need for the services and it is appropriate to focus public resources on such areas.

New §363.1008, Determination, describes criteria considered necessary to establish funding eligibility. These criteria include requiring the applicant to establish that the state will recover its investment, that the cost of the facility exceeds the current financing capability of area to be served, that the optimum regional development cannot reasonably be financed by local interests, that the public interest will be served by acquisition of the facility, and that the facility contemplates optimum regional development of the project. These criteria are statutorily required by §16.135 and §16.136 of the Texas Water Code, and are adopted without change from the language previously adopted in Subchapter F, and thus do not change current program requirements. New §363.1009, Master Agreement, outlines provisions for a master agreement between the board and a political subdivision. Section 363.1009 is adopted without change from the language previously adopted in Subchapter F, and thus does not change current program requirements. New §363.1010, Construction, provides for designation of a political subdivision as the manager of a project. Section 363.1010 is adopted without change from the language previously adopted in Subchapter F, and thus does not change current program requirements. New §363.1011, Disbursement of State Funds, provides that funds will be disbursed according to a master agreement between the board and the political subdivision. Section 363.1011 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements.

New §363.1012, Requirements of Application, provides that the executive administrator will define the form and number of applications to be submitted and may request additional information. Section 363.1012 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements. New §363.1013, Notice to Participating Political Subdivision and Others, establishes notice requirements that the board must provide to co-owners of the facility if a purchase of the board's interest in or use of the board's interest is proposed. Section 363.1013 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements. New §363.1014, Consideration by Board, outlines procedures for board consideration and notice of an application for purchase of the board's interest. Section 363.1014 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements. New §363.1015, Resolution Authorizing Transfer, provides a mechanism to prescribe terms and conditions if necessary for sale, transfer and lease of the board's interest. Section 363.1015 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements. New §363.1016, Negotiation of Contracts, provides

for a transfer agreement, all provisions appropriate to the subject of the transfer agreement, and attorney general approval. Section 363.1016 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements. New §363.1017, Administrative Cost Recovery for State Participation Program, provides that the board will assess fees for the purpose of recovering administrative costs for participation in the program and establishes the method of payment. Fees are set at .77% of the amount of total participation in a project by the board. One-third is due at closing. The remainder may be paid over annual installments with approval of the development fund manager. Section 363.1017 is adopted without change from the language previously adopted in Subchapter F and thus does not change current program requirements.

Comments on the proposed amendments, repeal, and new sections were received from Environmental Defense and TeXas Economists.

Environmental Defense recommended that the board create a bifurcated prioritization process with one process for projects whose individual costs are less than $10 million dollars (or other appropriate figure) and a separate prioritization process for major projects whose individual costs exceed $10 million dollars. Environmental Defense stated that it believes that the level of scrutiny and review necessary to protect the public interest is different for small, relatively routine low-impact projects than for large, costly, and large-impact projects. Environmental Defense proposed that the prioritization process for major projects consist of three stages. In the first stage, projects whose costs would exceed $10 million dollars would have to demonstrate that they pass a cost-benefit analysis. Environmental Defense recommends that those projects which did not pass a cost-benefit analysis would not be eligible for continued consideration for funding. The second stage of analysis would create an initial ranking of water projects on the basis of the present value of the cost of delivered, treated water per acre foot. The final stage of Environmental Defenses' proposed analysis would be adjustments to the initial ranking. At this stage the board would take into consideration the various policy considerations that might cause it to vary from a ranking based on economic factors and could, as an example provided by Environmental Defense, move a project up the list if it were to serve an economically disadvantaged area.

BOARD RESPONSE: The board is adopting the rules without change based upon the comments recommending the use of cost-benefit analyses. The board believes that the number and significance of assumptions which are utilized in deriving the results of a cost-benefit analysis, in both preparation and review, produce too much uncertainty in the results of such study for the board to justify inclusion of a cost-benefit analysis in the rules at this time. For these reasons, the board is unwilling to impose the expense of a preparation of a cost-benefit analysis upon applicants for State Participation Funding. Additionally, the board does not agree with the comments suggesting adoption of a bifurcated prioritization process for projects based upon project cost. The board believes that all projects, because they are recipients of public funds, should receive the same level of scrutiny. Accordingly, no changes are recommended to the rules based upon those comments relating to cost-benefit analysis or creation of a bifurcated prioritization process.

Environmental Defense also suggested that all water conservation practices should be included in the list of items in proposed §363.1007(a)(2) earning two points.

BOARD RESPONSE: The board agrees and proposes to add a provision to §363.1007(a)(2) to facilitate awarding points to projects which achieve a new, usable supply of water through conservation as well as through the use of innovative technology.

Environmental Defense also suggested that the items listed in proposed §363.1007(a)(4) should form the basis for demerit points. Specifically, Environmental Defense proposed that applicants for any water project that does not have an approved or complete water plan should lose one point, and for each of the elements in proposed §363.1007(a)(4)(B) that an applicant's water conservation plan does not have, 0.125 points should be subtracted.

BOARD RESPONSE: The board believes that it is sound public policy to encourage the use of water conservation plans. The board believes, however, that increasing the points awarded for a complete water conservation plan will accomplish this goal more effectively than utilizing a demerit system as recommended by Environmental Defense. Accordingly, the board proposes to change the number of points awarded under proposed §363.1007(a)(4) from two to four points. Additionally, based upon Environmental Defenses' comments, the board adopts §363.1007(a)(4)(B) with changes by increasing from 0.125 point to .25 point the percentage of a point received by applicants for each element listed in §363.1007(a)(4)(B)(i)-(viii).

Comments were also received from TeXas Economists. TeXas Economists submitted comments suggesting that language be added to the proposed rule requiring the completion of a basic cost-benefit study on par with the requirement that applicants complete engineering feasibility reports. Specifically, TeXas Economists suggested that a new Subsection K be added to proposed §363.1004 providing that applicants submit an economic cost-benefit analysis report completed by a professional economist for all projects with a capital investment of $10 million or greater. TeXas Economists comments suggests that the cost-benefit analysis report provide a description and purpose of the project; the economic demand for water for the intended future population; the opportunity cost of the project; an assessment of economic alternatives, both structural and non-structural; a comparison of costs and benefits on a present value basis, and a description of the alternatives considered and reasons for selection of the project proposed. TeXas Economists also suggested inclusion of language at proposed §363.1004(L) and §363.1005 providing for consideration of economic cost-benefit reports and information. TeXas Economists also suggested that proposed §363.1007 be modified to reflect that projects exceeding $10 million in investment costs may be funded only if they demonstrate that benefits exceed the cost for each such project, for each purpose of multi-purpose projects.

BOARD RESPONSE: Since the board does not recommend adoption of a cost-benefit analysis requirement, for the reasons explained in the board's response to comments received from Environmental Defense, no changes were made to require the use of a professional economist at this time because the services of the economist are suggested to be rendered in pursuit of cost-benefit analysis. The board does not believe that the benefits obtained from requiring a cost-benefit analysis and the use of a professional economist to perform such analysis would justify the expense to applicants of such a requirement.

The board also believes that the use of present value calculations of project cost on per acre-foot of water basis does not adequately reflect relative need for such water and may tend to create a regional bias in favor of areas in which local geographic conditions make it cheaper to produce water than in regions of the state in which scarcity or quality of water make it more expensive to produce. The board makes no changes in the rule based upon comments suggesting separate rating criteria for projects exceeding $10 million of investment costs because the board believes that all projects, because they are recipients of public funds, regardless of project size, should receive the same high level of scrutiny.

SUBCHAPTER F. STORAGE ACQUISITION PROGRAM

31 TAC §§363.601 - 363.604

The amendments are adopted under the authority of the Texas Water Code §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and under Chapter 16, Subchapters E and F, which provide the statutory criteria for the State Participation Program.

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

Filed with the Office of the Secretary of State on September 18, 2002.

TRD-200206116
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 463-7981

31 TAC §363.613

The repeal is adopted under the authority of the Texas Water Code §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and under Chapter 16, Subchapters E and F, which provide the statutory criteria for the State Participation Program.

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

Filed with the Office of the Secretary of State on September 18, 2002.

TRD-200206115
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 463-7981

SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1001 - 363.1017

The new sections are adopted under the authority of the Texas Water Code §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and under Chapter 16, Subchapters E and F, which provide the statutory criteria for the State Participation Program.

§363.1007. Rating Criteria.

(a) The factors to be used by the executive administrator to rate projects seeking financial assistance from the State Participation Account, and the points assigned to each factor, shall be as follows:

(1) water development projects will receive 2 points, and wastewater projects will receive 1 point;

(2) projects which result in the development of a new, usable supply of water through conservation or innovative technologies including, but not limited to, desalinization, demineralization, other advanced water treatment practices, wastewater reuse, floodwater harvesting, or aquifer storage and recovery will receive 2 points;

(3) projects which have received previous board funding for facility planning, design, or permitting for the project being rated will receive 1 point;

(4) water conservation programs required under §363.1004(10)(G) of this title (relating to Application for Assistance) will be granted a maximum of 4 points for each applicant based upon the following.

(A) Applicants which have previously adopted a board approved water conservation program or who have previously submitted a water conservation program to the commission that has been deemed complete by the commission will receive 2 points.

(B) Applicants will receive 0.25 points for each of the following elements that are found in the submitted water conservation program totalling to a maximum sum of 2 rating points per applicant:

(i) codes and ordinances which require the use of water-conserving technologies;

(ii) ordinances to promote efficiency and avoid waste;

(iii) commercial and residential conservation audits for indoor and landscape water uses;

(iv) plumbing fixture replacement and retrofit programs;

(v) recycling and reuse of reclaimed wastewater and/or gray water;

(vi) demonstrated submittals of accepted annual water conservation reports to the board and/or the commission;

(vii) demonstrated historical unexplained water loss of no more than 15%;

(viii) provision to update the program in intervals no longer than once every five years.

(5) Applicants which propose to use local funds for a portion of the project will receive the number equal to the percentage of local ownership, expressed as a decimal.

(6) Applicants will receive a number equal to the percentage, expressed as a decimal, of the total facility capacity that would be necessary to serve the existing population that could use the facility at the time the application is filed.

(b) Between tie scores only, 1 point will be awarded to the project having the service area which has the lowest median annual household income, based upon the most current data available from the U.S. Bureau of the Census, for all of the areas to be served by the project.

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 18, 2002.

TRD-200206117
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 8, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 463-7981

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.309, §3.350

The Comptroller of Public Accounts adopts the repeal of §3.309 and §3.350, concerning electrical transcriptions, recording studios, producers; and motion pictures, without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7046).

These sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.309 and §3.350 will be included in a new §3.350, concerning motion pictures and audio recordings which will be submitted at a later time.

No comments were received regarding adoption of the repeal.

These repeals are 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 repeals implement Tax Code, §111.002.

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

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

TRD-200206123
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: October 9, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 475-0387

34 TAC §3.318

The Comptroller of Public Accounts adopts a new §3.318, concerning water-related exemptions, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6806).

This section implements Senate Bill 2 and Senate Bill 312, 77th Legislature, 2001. This legislation added Tax Code, §151.355, which exempts certain equipment, services, and supplies that are used exclusively for brush control, desalination of surface water or groundwater, precipitation enhancement, reduction or elimination of water use; or in the construction or operation of certain water supply or waste water systems. Equipment and supplies that are used exclusively for rainwater harvesting or for water recycling and reuse are also exempt. The effective date of the exemption is September 1, 2001. The adopted section also provides useful information about the exemption of water and the taxability of flavored water and brine water. The adopted section also provides information about exemptions available for nonprofit water supply or sewer service corporations that are financed by the rural water assistance fund or the economically distressed areas program (EDAP).

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §151.315 and §151.355, and Water Code §15.954(f) and §17.921(1).

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 19, 2002.

TRD-200206124
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: October 9, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 475-0387

34 TAC §3.354

The Comptroller of Public Accounts adopts an amendment to §3.354, concerning debt collection services, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6807).

The amendment adds subsection (d)(3) to implement House Bill 2833, 77th Legislature, 2001. Effective July 1, 2001, taxable debt collection services do not include the services of a trustee in connection with the foreclosure sale of real property under a lien created by a mortgage, deed of trust, or security instrument. The other amendments are for the purpose 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, §151.0036.

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 19, 2002.

TRD-200206125
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: October 9, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 475-0387

SUBCHAPTER P. MUNICIPAL SALES AND USE TAX

34 TAC §3.372

The Comptroller of Public Accounts adopts an amendment to §3.372, concerning adopting, increasing, decreasing, or abolishing city tax, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6810).

This rule is amended pursuant to House Bill 445, 77th Legislature, 2001, to allow a municipality to impose an additional tax at a rate of one-fourth of 1.0% for the purpose of maintaining and repairing municipal streets that exist on the date of the election to adopt the tax. Unless reauthorized, the new tax expires on the fourth anniversary of the date on which it originally took effect or the first day of the first calendar quarter occurring after the fourth anniversary of the date on which the tax was last reauthorized. The amendment adds the definition of a municipal street and renumbers subsections (b)(4) and (b)(5).

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, §§327.004, 327.005, and 327.007.

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 19, 2002.

TRD-200206126
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: October 9, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) adopts amendments to §19.1303, §19.1304, §19.1402, §19.2609, and new §19.1306 in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The amendments to §19.1402 and §19.2609, and new §19.1306 are adopted with changes to the proposed text published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5511). The amendments to §19.1303 and §19.1304 are adopted without changes to the proposed text.

Justification for the amendments and new section is to require that claims be submitted within 12 months of the last day of service to comply with federal regulations at 42 Code of Federal Regulations, §447.45(d), and to reflect current practice regarding payment of claims in Specialized Services, Rehabilitative Services, and the Emergency Dental Program. New §19.1306 consolidates payment information previously contained in §19.1303 and §19.1304. The rules were combined to make them clearer.

DHS received written comments from the Texas Association for Home Care regarding community care claims at §49.9, which was part of this proposal. The comments had application for all sections addressing claims in this proposal. A summary of the comments and DHS's responses follow.

Comment: The last sentence of §49.9(c)(12)(C) should read: "Claims and adjustments rejected or denied during the 12-month period through no fault of the provider may be paid upon approval by DHS." There are instances where the claim is submitted timely but may be rejected rather than denied, through no fault of the provider, especially upon implementation of a new payment system.

Response: DHS agrees with the concerns expressed. Because the language in §49.9(c)(12)(C) contains essentially the same language as other sections concerning adjustment to claims in

the proposal, DHS made the suggested change to §19.1306(g), §19.1402(d)(7), and §19.2609(2) in response to the comment.

Comment: Add (D) to §49.9(c)(12), stating: "The provider agency must resolve retroactive adjustments within 12 months after the date of the retroactive adjustment." Many times DHS will make a retroactive adjustment after a claim has been paid and this may be much later than the 12 months from the service date. DHS recoups the money, and the provider has to research the reason and re-bill the correct amount. Without including the above provision, the provider would not be able to be paid the correct amount for the services provided.

Response: DHS agrees with the concerns expressed. Language was added to §19.2609, which has similar language. The following has been added as §19.2609(4): "The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re- billing in the case of state-generated retroactive adjustments." The original §19.2609(4) language is now paragraph (5).

DHS initiated a minor editorial change in §19.1402(c) to change National Heritage Insurance Company (NHIC) to Medicaid claims administrator to use a generic term rather than name a specific company.

SUBCHAPTER N. REHABILITATIVE SERVICES

40 TAC §§19.1303, 19.1304, 19.1306

The amendments and new section are adopted 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 amendments and new section implement the Human Resources Code, §§22.001- 22.036 and §§32.001-32.052.

§19.1306. Payment for Specialized and Rehabilitative Services.

(a) The Texas Department of Human Services (DHS) reimburses nursing facilities and Title XVIII-certified providers for Specialized and Rehabilitative Services.

(b) The services must:

(1) be ordered by the attending physician; and

(2) have prior authorization by DHS.

(c) DHS reimburses:

(1) nursing facilities the maximum allowable Medicaid rate per visit as determined by the Texas Health and Human Services Commission (HHSC);

(2) therapy providers the interim rate per visit as determined by Medicare.

(d) A visit is defined as one physical, occupational, or speech therapy service performed for one resident. An evaluation is paid at the same rate as one visit.

(1) One evaluation is paid without prior authorization.

(2) Any additional evaluations must be supported by the attending physician's documentation that indicates a new illness, injury, or a substantive change in a pre-existing condition.

(e) Complete and accurate claims for services must be received by DHS within 12 months from the last approved treatment day the services were provided.

(f) Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(g) Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the provider may be paid upon approval by DHS.

(h) Requests for appeals of denials of prior authorizations or re-certifications must be made in writing by the nursing facility administrator to Rehabilitative/Specialized Services, Texas Department of Human Services, P.O. Box 149030 (W-519), Austin, Texas 78714-9030. The request for appeal must be received by the 30th day from the date of the original denial determination.

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 18, 2002.

TRD-200206099
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 438-3734

SUBCHAPTER O. DENTAL SERVICES

40 TAC §19.1402

The amendment is adopted 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.

§19.1402. Medicaid-certified Nursing Facility Emergency Dental Services.

(a) Emergency dental services. The Texas Department of Human Services (DHS) will reimburse nursing facilities the cost of emergency dental services provided to eligible Medicaid residents residing in Medicaid-contracted facilities or distinct parts.

(1) Recipients must be 21 years of age or older.

(2) Dental care for recipients under the age of 21 is covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

(3) Services reimbursed are subject to the limitations specified in §19.1401(b) of this title (relating to Dental Services).

(4) Emergency dental services may be provided only if the attending physician orders a dental consultation. See §19.1201 of this title (relating to Physician Services).

(b) Dental providers. Emergency dental services must be provided by a dentist licensed by the Texas State Board of Dental Examiners who, if not employed by the facility, contracts with the facility according to the specifications outlined in §19.1906 of this title (relating to Use of Outside Resources).

(c) Reimbursement for Emergency Dental Services. The cost of emergency dental services provided to eligible Medicaid residents residing in nursing facilities will be reimbursed to facilities, provided that the services are not reimbursable by the Medicaid claims processor or the EPSDT program.

(d) Payment of Claims.

(1) The facility must accept payment by DHS as payment in full for services. Neither the dentist nor the facility may charge an additional fee to the recipient, his family, or his trust fund, except that the dentist may charge the recipient for services that:

(A) the recipient requests; and

(B) are not reimbursable by the Texas Medical Assistance Program.

(2) Payments for emergency dental services are the lower of the:

(A) dentist's usual fee; or

(B) maximum fee as determined by the Texas Health and Human Services Commission (HHSC).

(3) DHS reimburses facilities for services properly rendered in accordance with applicable laws, regulations, and operational instructions. DHS may withhold or suspend payment for services that are not properly rendered.

(4) Nursing Facility Emergency Dental Services makes no payment for services that are available under any other Texas Medical Assistance Program.

(5) Complete and accurate claims for services must be received within 12 months from the date of service.

(6) Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(7) Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the dentist may be paid upon approval by DHS.

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 18, 2002.

TRD-200206100
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 438-3734

SUBCHAPTER AA. VENDOR PAYMENT

40 TAC §19.2609

The amendment is adopted 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.

§19.2609. Payment of Claims.

In order to receive payment for services provided, the nursing facility's complete and accurate claim for services for which the nursing facility is entitled to payment must be received by the Texas Department of Human Services' (DHS's) claims processor within 12 months after the date of service. For purposes of this section, date of service is defined as the last day of the month in which the service was provided. Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(1) All payments are subject to availability of funds as provided by law.

(2) Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the nursing facility may be paid upon approval by DHS.

(3) In the event that Medicaid eligibility for benefits is established after provision of services, the 12-month period for submission of claims will start on the date eligibility is established.

(4) The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments.

(5) The procedures outlined in §19.2413 of this title (relating to Reconsideration of Medical Necessity (MN) Determination and Effective Dates) are not affected by 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 18, 2002.

TRD-200206101
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 438-3734

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.62

The Texas Department of Human Services (DHS) adopts an amendment to §30.62 in its Medicaid Hospice Program chapter with changes to the proposed text published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5514).

Justification for the amendment is to require that claims be submitted within 12 months of the last day of service to comply with federal regulations at 42 Code of Federal Regulations, §447.45(d). The amendment also reflects current practice.

DHS received written comments from the Texas Association for Home Care regarding community care claims at §49.9, which was part of this proposal. The comments had application for all sections addressing claims in this proposal. A summary of the comments and DHS's responses follow.

Comment: The last sentence of §49.9(c)(12)(C) should read: "Claims and adjustments rejected or denied during the 12-month period through no fault of the provider may be paid upon approval by DHS." There are instances where the claim is submitted timely but may be rejected rather than denied, through no fault of the provider, especially upon implementation of a new payment system.

Response: DHS agrees with the concerns expressed. Because the language in §49.9(c)(12)(C) contains essentially the same language as §30.62(a)(2)(D), DHS made the suggested change to that subparagraph.

Comment: Add (D) to §49.9(c)(12), stating: "The provider agency must resolve retroactive adjustments within 12 months after the date of the retroactive adjustment." Many times DHS will make a retroactive adjustment after a claim has been paid and this may be much later than the 12 months from the service date. DHS recoups the money, and the provider has to research the reason and re-bill the correct amount. Without including the above provision, the provider would not be able to be paid the correct amount for the services provided.

Response: DHS agrees with the concerns expressed. Language was added to §30.62, which has similar language. The following has been added as §30.62(a)(2)(E): "The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments."

DHS initiated a minor change in §30.62(a)(2) to make language consistent with all sections addressing claims in this proposal.

The amendment is adopted 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.

§30.62. Medicaid Hospice Claims Processing Requirements.

(a) Requirement for payment.

(1) To receive Medicaid hospice payments, an entity must be licensed as a hospice, Medicare certified by the Centers for Medicare and Medicaid Services (CMS) as a hospice, and Medicaid certified by the Texas Department of Human Services (DHS).

(2) A hospice that seeks payment for Medicaid hospice services must submit a complete and accurate claim for which the hospice is entitled to payment that must be received by DHS's claims processor within 12 months after the date of service. For purposes of this section, date of service is defined as the last day of the month in which the service was provided.

(A) If Medicaid eligibility for benefits is established after provision of services, the 12-month period for submission of claims starts on the date eligibility is established.

(B) Medicaid hospice payments are subject to availability of state and federally appropriated funds.

(C) Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(D) Adjustment to claims must be received by DHS's claims processor during the applicable 12- month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the hospice may be paid upon approval by DHS.

(E) The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments.

(b) Submittal and forms completion requirements. To receive Medicaid Hospice payments, the provider must submit the following documents to Provider Claims Payment:

(1) Texas Medicaid Hospice Program Recipient Election/Cancellation Notice form;

(2) Texas Medicaid Hospice Program Physician Certification of Terminal Illness form; and

(3) Texas Index for Level of Effort (TILE) Assessment form, if applicable.

(c) Denials. DHS will deny the following provider claims to the Medicaid Hospice Program and/or to other DHS programs:

(1) claims for hospice service days prior to a valid Medicaid Hospice Election Notice and a Physician Certification of Terminal Illness(es);

(2) claims which have been returned to the provider or recipients who have revoked the election of the Medicaid Hospice Program;

(3) claims for recipients who have been denied Medicaid eligibility;

(4) claims for Medicare-Medicaid recipients who are covered by the Medicare Hospice benefit; and

(5) claims by hospice providers whose Medicaid hospice contract has been cancelled.

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 18, 2002.

TRD-200206102
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 438-3734

CHAPTER 49. CONTRACTING FOR COMMUNITY CARE SERVICES

40 TAC §49.9

The Texas Department of Human Services (DHS) adopts amendments to §49.9, concerning billings and claims payment, in its Contracting for Community Care Services chapter with changes to the proposed text published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5515).

Justification for the amendment is to require that claims be submitted within 12 months of the last day of service to comply with federal regulations at 42 Code of Federal Regulations, §447.45(d). The proposal also updates the rule to reflect current practice.

DHS received written comments from the Texas Association for Home Care. A summary of the comments and DHS's responses follow.

Comment: The last sentence of §49.9(c)(12)(C) should read: "Claims and adjustments rejected or denied during the 12-month period through no fault of the provider may be paid upon approval by DHS." There are instances when the claim is submitted timely but may be rejected rather than denied, through no fault of the provider, especially upon implementation of a new payment system.

Response: DHS agrees with the concerns expressed and made the suggested change in response to the comment.

Comment: Add (D) to §49.9(c)(12), stating: "The provider agency must resolve retroactive adjustments within 12 months after the date of the retroactive adjustment." Many times DHS will make a retroactive adjustment after a claim has been paid and this may be much later than the 12 months from the service date. DHS recoups the money, and the provider has to research the reason and re-bill the correct amount. Without including the above provision, the provider would not be able to be paid the correct amount for the services provided.

Response: DHS agrees with the concerns expressed. The following language has been added as §49.9(c)(12)(D): "The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments."

The amendment is adopted 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.

§49.9. Billings and Claims Payment.

(a) A Texas Department of Human Services (DHS) provider agency may not charge or take other recourse against participants, their family members, or persons acting on the client's behalf for any claim denied or reduced by DHS because of the provider agency's failure to comply with any DHS or federal rule, regulation, or procedure.

(b) A provider agency delegating signature authority to office staff or to a billing service for claims preparation is responsible for the accuracy of the claim submitted for payment.

(c) A provider agency is entitled to payment if:

(1) services are authorized on the appropriate DHS form;

(2) verbally approved forms or facility-initiated referrals, if applicable, are submitted to DHS within the required time frame;

(3) verbal prior approval or facility-initiated referral documentation, when applicable, is supportive of verbal approval;

(4) reimbursement corresponds to the provider agency's service authorizations and service delivery record;

(5) services, when allowed to be ordered by a physician, are allowed under Title XVIII and Title XIX of the Social Security Act;

(6) services are ordered, where allowed, by a physician whose license has not been suspended or excluded from participation in either Title XVIII or XIX of the Social Security Act;

(7) physician orders, when required, are available;

(8) appropriate billing forms are used and approved billing procedures are followed;

(9) services are provided to a client on or before the date services are terminated;

(10) services are provided by an individual whose license or certification has not been suspended or excluded from participation in either Title XVIII or XIX of the Social Security Act;

(11) billings are submitted after services have been provided;

(12) a complete and accurate claim for services for which the provider is entitled to payment is received by DHS's claims processor within 12 months after the date of service. For purposes of this section, date of service is defined as the last day of the month in which the service was provided. Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(A) All payments are subject to availability of funds as provided by law.

(B) In the event that Medicaid eligibility for benefits is established after provision of services, the 12-month period for submission of claims will start on the date eligibility is established.

(C) Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the provider may be paid upon approval by DHS.

(D) The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments;

(13) the client is eligible for Medicaid benefits (if services are provided through Medicaid); and

(14) the client is not an inpatient of a hospital, intermediate care facility, skilled nursing facility, or intermediate care facility for the mentally retarded (except when a provider agency is authorized to receive payment for an assessment used to determine eligibility).

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 18, 2002.

TRD-200206103

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: June 21, 2002
For further information, please call: (512) 438-3734

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER K. COURT-RELATED SERVICES

40 TAC §700.1109

The Texas Department of Protective and Regulatory Services (PRS) adopts an amendment to §700.1109, without changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7058).

The justification for the amendment is to update and clarify the section by specifying that child support will be sought in all foster care cases. The amendment also deletes requirements that are contained in §700.1108, Request for Child Support Orders, updates current eligibility terms, and properly identifies the state agency and division responsible for child support enforcement.

The amendment will function by ensuring that child support enforcement is operated in an effective and efficient manner.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code §40.029, which authorizes the department to propose and adopt rules in compliance with state law and to implement department programs.

The amendment implements the Human Resources Code, §40.029.

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 20, 2002.

TRD-200206147
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 1, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

CHAPTER 702. GENERAL ADMINISTRATION

SUBCHAPTER M. VEHICLE FLEET MANAGEMENT

40 TAC §702.1201, §702.1203

The Texas Department of Protective and Regulatory Services (PRS) adopts new Subchapter M, Vehicle Fleet Management, consisting of §702.1201 and §702.1203, without changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7058).

The justification for the new sections is to establish policies and procedures, as required by state law, concerning the use and assignment of agency-owned vehicles. The sections are consistent with the Vehicle Fleet Management Plan adopted by the Office of Vehicle Fleet Management of the Texas Building and Procurement Commission.

The new sections will function by ensuring that PRS is in compliance with state law requiring PRS to adopt rules concerning management of its vehicles.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, §40.029, which authorizes PRS to propose and adopt rules to facilitate implementation of department programs, and the Government Code, §2171.1045, which requires each state agency to adopt rules relating to the assignment and use of the agency's vehicles.

The new sections implement the Government Code, §2171.1045.

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 20, 2002.

TRD-200206151
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 17, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

CHAPTER 720. 24-HOUR CARE LICENSING

SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.29

The Texas Department of Protective and Regulatory Services (PRS) adopts an amendment to §720.29, without changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7059).

The justification for the amendment is to remove language that conflicts with federal law. The current rule requires child-placing agencies to ensure that a child's cultural needs are considered when being placed in foster or adoptive placements. In most

cases, this consideration would be prohibited by the Multi-Ethnic Placement Act of 1994 (MEPA) and the Removal of Barriers to Interethnic Adoption Provisions of 1996 (IEP). Generally, this federal legislation prohibits a child-placing agency, when making a foster or adoptive placement, from considering the race, color or national origin of the child or of the foster or adoptive family; and from considering the capacity of the prospective foster or adoptive parents to meet the needs of a child relating to race, color, or national origin. The amendment removes this requirement.

The amendment will function by being in compliance with federal law.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs, and HRC, §42.042, which gives the department the authority to promulgate rules to carry out provisions of the statute and to regulate child care operations.

The amendment implements the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622) and the Removal of Barriers to Interethnic Adoption Provisions of 1996 (IEP).

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 20, 2002.

TRD-200206146
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 1, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

CHAPTER 745. LICENSING

The Texas Department of Protective and Regulatory Services (PRS) adopts amendments to §§745.37, 745.129 and 745.143; adopts the repeal of §745.141; and adopts new §745.141, in its Licensing chapter. The amendment to §745.129 is adopted with changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7060). The amendments to §745.37 and §745.143, the repeal of §745.141, and new §745.141 are adopted without changes to the proposed text and will not be republished.

The justification for the rules is to allow neighborhood recreation programs to serve children ages 5 through 13 years in lieu of the current age range, 8 through 13 years. The sections are changed to more closely mirror the criteria in Chapter 42 of the Human Resources Code, §42.041(b)(14) for a municipal recreational program that is exempt. The changes in §745.129(1) provide exemption for a neighborhood recreation program that complies with standards that are used nationally that include staffing ratios, staff training, and health and safety requirements; add requirements for parents to sign statements saying their children may come and go at will from the program; delete references to enrollment information; and change age limits on children served. Changes to §745.141 and §745.143 add that an exempt program may apply to be licensed in order for the program to receive public funding. In addition, updates to §745.37(2)(F) and (H) have been made so that the administrative rules in Chapter 745, Licensing, match the minimum standard rules in Chapter 720, 24-Hour Care Licensing.

The sections will function by having exemption rules that are more consistent, and PRS will be able to concentrate public resources on those programs subject to regulation.

During the comment period, PRS received comments from the Boys and Girls Clubs of America. A letter was received from a state legislator on behalf of the Boys and Girls Clubs in his district requesting some of the same changes. Comments were also forwarded to PRS from a state representative on behalf of a constituent, who also sent the same letter to PRS. In addition, this same legislator, on behalf of the same constituent, requested that the age range to be served include 5 to 18 year olds and no additional requirements for programs. A summary of the comments and PRS's responses follow:

Comments concerning §745.129:

Two commenters wanted to add descriptive words, "youth development," related to one type of recreational program, and requirements related to one type of recreational program. These commenters also asked for clarification of words such as "tell" and "compensation for services" or to change the rule to exclude these words. One of these two commenters also wanted to add "background checks by other entities." One commenter requested a clarification of whether national standards meant federal standards. In addition, one commenter requested that the age be expanded to 18 and other requirements be excluded.

Response: PRS amends and adopts subparagraphs (C), (G) and (I) of paragraph (1) with changes. The changes make the language of the rule clearer and maintain the integrity of the exemption to apply to most neighborhood recreational programs, rather than a select few. The age range was not changed as requested because the age limit for day care programs regulated or exempt from regulation by our agency is up to 14 years. In addition, other requirements were not excluded because PRS believes that only an entity which meets these criteria can offer a reasonable alternative to being licensed and regulated in order to ensure the safety of children.

Comments concerning §745.141 and §745.143: One commenter was concerned that a program that received public funding would need to be licensed.

Response: PRS is adopting these sections without change. The intent of the rule is not to require that all programs that receive public funding be licensed, but to give programs the option to be licensed if they meet the criteria to be exempted from licensure, but receive any type of public funding. The rules make it clear that exempt programs may be licensed, if needed for any type of public funding. Previously the rules only allowed an exempt program to be licensed if receiving state or federal funding.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.37

The amendment is adopted under the Human Resources Code, §40.029, which authorizes PRS to propose and adopt rules to facilitate implementation of department programs, and the Human

Resources Code, §40.002, which gives the department primary responsibility for regulating child-care facilities.

The amendment implements the Human Resources Code, §40.029 and §40.002.

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206148
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 1, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §§745.129, 745.141, 745.143

The amendments and new section are adopted under the Human Resources Code, §40.029, which authorizes PRS to propose and adopt rules to facilitate implementation of department programs, and the Human Resources Code, §40.002, which gives the department primary responsibility for regulating child-care facilities.

The amendments and new section implement the Human Resources Code, §40.029 and §40.002.

§745.129. What miscellaneous programs are exempt from Licensing regulation?

The following miscellaneous programs are exempt from our regulation:
Figure: 40 TAC §745.129

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 20, 2002.

TRD-200206149
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 1, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

40 TAC §745.141

The repeal is adopted under the Human Resources Code, §40.029, which authorizes PRS to propose and adopt rules to facilitate implementation of department programs, and the Human Resources Code, §40.002, which gives the department primary responsibility for regulating child-care facilities.

The repeal implements the Human Resources Code, §40.029 and §40.002.

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

Filed with the Office of the Secretary of State on September 20, 2002.

TRD-200206150
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 1, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 438-3437

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) adopts amendments to §809.92, §809.101, §809.103, and §809.121 relating to Child Care and Development rules without changes to the text as proposed in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6242).

The purpose of the amendments to §809.92 and §809.121 was to move the reference in §809.92(b)(4) to §809.121. Since the provision in §809.92(b)(4) applied more specifically to eligibility related to children living at low incomes instead of the general eligibility requirements, the Commission relocated the provision.

In §809.101, the purpose of the amendments was to encourage the efficient use of child care funds in support of families transitioning off of TANF by removing specific references to education or training components and substituting a broader reference to a "Choices activity" which includes work and employment-related activities as well as education or training components. Additional clarifications were made to update the terms in this section to be consistent with the terms used in Chapter 811 related to Choices. The updates included changing the terms from "client" to "recipient" and from "component" to "activity." Changes to subsection (d) were made to emphasize that TANF recipients, whose temporary cash assistance has expired must meet the requirements of Chapter 811 to receive transitional child care. A statement was added to subsection (d) to clarify that this provision does not apply to individuals engaged in unsubsidized employment who are eligible under the provisions of §809.101(a)(1). Subsection (e) was added to state that TANF recipients who are engaged in a Choices activity, meeting the requirements of Chapter 811, and denied temporary cash assistance due to receipt of child support, shall be eligible to receive transitional child care services until the date on which the TANF recipient completes the activity, as defined by the Board.

In §809.103, the purpose of the amendments was to clarify the intent of the Commission, which is that Applicants who are employed at the time of application, but continue to be eligible for temporary cash assistance, be referred to a Workforce Orientation for Applicants and be eligible to receive Applicant child care. The phrase "or retain" was added to subsection (a)(1), and subsection (d) was added to clarify the Commission's intent to encourage Applicants who are working but continue to be eligible for temporary cash assistance to obtain employment that will enable them to support their families. The amendments emphasize the importance of full-time employment by limiting Applicant child care services to ninety (90) days for Applicants who are employed less than fifteen (15) hours a week at the time of application unless the hours of employment are increased to a minimum of 30 hours per week before the end of the ninety (90) days. The rule also provides that Applicant child care may be extended to a total of twelve (12) months, inclusive of the ninety (90) days, if the Applicant increases the hours of employment to at least thirty (30) hours per week as required in §809.103(d).

No comments were received by the Commission during the comment period.

SUBCHAPTER F. GENERAL ELIGIBILITY FOR CHILD CARE

40 TAC §809.92

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34, as well as Texas Government Code Chapter 2308.

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 17, 2002.

TRD-200206053
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-2573

SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

40 TAC §809.101, §809.103

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34, as well as Texas Government Code Chapter 2308.

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 17, 2002.

TRD-200206054
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-2573

SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

40 TAC §809.121

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34, as well as Texas Government Code Chapter 2308.

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 17, 2002.

TRD-200206055
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-2573

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

The Texas Workforce Commission (Commission) adopts the repeal of §815.111 and new §815.111. Transfer of Compensation Experience related to Chapter 815, Unemployment Insurance, Subchapter C. Tax Provisions, without changes as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6826). The text will not be republished.

The purpose of this section is to clarify provisions related to Texas Labor Code Section 204.084, including the filing process and the definition of an identifiable and segregable part of an organization, trade, or business for transferring compensation experience.

The purpose for choosing one year as the time limit for filing the application to transfer compensation experience is to make clear a defined timeline for filing the application, while setting a distinct deadline to assist in administration. The Commission is of the opinion that one year is sufficient and not overly burdensome.

No comments were received on the proposed repeal and new rule.

For more information about the Commission and available services, see *www.texasworkforce.org*.

40 TAC §815.111

The rule is repealed under Texas Labor Code §301.061.

The adopted repeal affects Texas Labor Code, Title 4.

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

Filed with the Office of the Secretary of State on September 17, 2002.

TRD-200206059
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 463-2573

40 TAC §815.111

The new rule is adopted under Texas Labor Code §301.061.

The adopted new rule affects Texas Labor Code, Title 4.

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

Filed with the Office of the Secretary of State on September 17, 2002.

TRD-200206058
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 463-2573

40 TAC §815.132

The Texas Workforce Commission (Commission) adopts new §815.132 Rate and Collection of Additional Tax to Chapter 815, Unemployment Insurance, Subchapter C. Tax Provisions, without changes as published in the August 2, 2002 issue of the *Texas Register* (27 TexReg 6826). The text will not be republished.

Title XII of the Social Security Act codified in part at 42 U.S.C.A .§1321 et seq., creates a process that permits a state to borrow from the Federal Unemployment Trust Fund, if a state's unemployment compensation trust fund becomes insolvent and the state can no longer pay benefits. In accordance with this process Subchapter C, Chapter 203 of the Texas Labor Code, V.T.C.A., entitled Advances from Federal Trust Fund, authorizes the Commission to borrow funds from the Federal Unemployment Trust Fund. The subchapter requires the Commission to assess and collect an additional tax to ensure that the interest is timely paid on advances borrowed from the Federal Unemployment Trust Fund. The additional tax is deposited in the advance interest trust fund.

Texas Labor Code, §203.105, provides that an additional tax is to be imposed on each employer eligible for an experience tax rate, if after January 1 of a year an interest payment on an advance borrowed from the Federal Unemployment Trust Fund will be due and the estimated amount necessary to make the interest payment will not otherwise be available. The section provides that the Commission will set a rate for an additional tax to ensure that there are sufficient funds in the advance interest trust fund to pay the interest in a timely manner for that year. The rate is not to exceed two-tenths of one percent (.2%). The rate is applied to the same wage base to which the employer's unemployment tax is applied for that year. The Commission will set the date the tax is due. The additional tax is subject to the same penalty for late payment as the unemployment tax.

The Commission has determined that when interest payments are due after January 1, the additional tax rate will be calculated by the Agency based on a formula. The Commission has also determined that the amount of tax revenue generated by this formula will be sufficient to ensure that the accrued interest on the advance the state obtain from the Federal Unemployment Trust Fund will be paid in a timely manner. This tax will be due and payable quarterly in the same manner as provided in §815.109 of this subchapter entitled Payment of Contributions and Reimbursements.

No comments were received on the proposed new rule.

For more information about the Commission and available services, see *www.texasworkforce.org*.

The new rule is adopted under Texas Labor Code §301.061.

The adopted new rule affects Texas Labor Code, Title 4.

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

Filed with the Office of the Secretary of State on September 17, 2002.

TRD-200206060
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: October 7, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 463-2573

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

ADOPTION OF NEW AND/OR ADJUSTED 2001, 2002, AND 2003 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2001, 2002, and 2003 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0802-32-I), was published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7555).

The new and/or adjusted symbols for the Manual's Symbol and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2001, 2002, and 2003 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0802-32-I, which are incorporated by reference into Commissioner's Order No. 02-0979.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98 and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with Insurance Code Article 6.95(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200206127
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 19, 2002

♦ ♦ ♦

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.

Agency Rule Review Plan--Revised

Texas Department of Health

Title 25, Part 1

TRD-200206161
Filed: September 20, 2002

Proposed Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review Chapter 9, concerning Talking Book library services for blind or physically handicapped individuals, in accordance with the requirements of the Government Code, §2001.039, and the General Appropriations Act, Article IX, Section 9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

The reasons for adopting the rules in Chapter 9 continue to exist. The rules were adopted pursuant to the Human Resources Code, §91.082 that requires the Texas State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials; Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library; and Government Code §441.112 that authorizes the commission to lend print access aids. The rules are necessary to establish policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission.

Comments on the review of Chapter 9 may be in writing submitted to Ava Smith, Director of Talking Book Program, Box 12927, Austin, Texas 78711-2927; may be faxed to (512) 936-2306; or may be submitted electronically to ava.smith@tsl.state.tx.us. For further information or questions, concerning this proposal, please contact Ava Smith at (512) 463-5428.

TRD-200206221
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: September 24, 2002

Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 64, concerning Representing Claimants Before the Board. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt Chapter 64.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 4, 2002, and submitted to Nell Cheslock, Legal Services Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 64 - Representing Claimants Before the Board

§64.25. Discharged Attorney.

§64.30. Adverse Representation in Claims for Death Benefits.

TRD-200206233
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 25, 2002

Adopted Rule Reviews

Texas Motor Vehicle Board

Title 16, Part 6

The Texas Motor Vehicle Board adopts the review of 16 TAC Part 6, Chapter 101, Practice and Procedure; Chapter 103, General Rules; Chapter 105, Advertising; Chapter 107, Warranty Performance Obligations; Chapter 109, Lessors and Lease Facilitators; and Chapter 111, General Distinguishing Numbers, in accordance with Texas Government Code, §2001.039, as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 6383).

No comments were received regarding adoption of the review.

No amendments were proposed as a result of the review. Sections 101.62, 101.66 and 107.10 had amendments pending, which were also adopted at the Board's September 19, 2002 meeting.

The Board finds that the reasons for adoption of these chapters continue to exist. This concludes the review of 16 TAC Part 6, Chapters 101, 103, 105, 107, 109 and 111.

The Board is authorized to readopt Chapters 101, 103, 105, 107, 109 and 111 by § 3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36), Texas Revised Civil Statutes, which provide the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

TRD-200206141
Brett Bray
Director
Texas Motor Vehicle Board
Filed: September 20, 2002

Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature, and pursuant to the notice of intention to review published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 6059), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

Chapter 114. Self-Insurance.

§114.1. Purpose.

§114.2. Definitions.

§114.3. Initial Application Form and Financial Information Requirements.

§114.4. Security Requirements.

§114.5. Excess Insurance Requirements.

§114.6. Safety Program Requirements.

§114.7. Certification Process.

§114.8. Refusal To Certify an Employer.

§114.9. Required Initial Safety Program Inspection.

§114.10. Claims Contractor Requirements.

§114.11. Audit and Inspection Program.

§114.12. Required Annual Reports.

§114.13. Required Notices to the Director.

§114.14. Impaired Employer.

§114.15. Revocation of Certificate of Authority to Self-Insure.

Chapter 125. Benefits--General Provisions Applicable to All Benefits.

§126.1. Definitions Applicable to All Benefits.

§126.2. Payment of Benefits to Minors.

§126.3. Payment of Benefits to Legally Incompetent Persons.

§126.4. Advance of Benefits Based on Financial Hardship.

§126.5. Entitlement and Procedure for Requesting Required Medical Examinations.

§126.6. Order for Required Medical Examination.

§126.7. Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor.

§126.8. Commission Approved Doctor List.

§126.9. Choice of Treating Doctor and Liability for Payment.

§126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

§126.12. Payment of Interest on Accrued but Unpaid Income Benefits.

§126.13. Employer Initiation of Benefits and Reimbursement.

Chapter 128. Benefits--Calculation Of Average Weekly Wage

§128.1. Average Weekly Wage: General Provisions.

§128.2. Carrier's Presumption of Employee's Average Weekly Wage.

§128.3. Average Weekly Wage Calculation for Full-Time Employees, and for Temporary Income Benefits for All Employees.

§128.4. Average Weekly Wage Calculation for Part-Time Employees.

§128.5. Average Weekly Wage Calculation for Seasonal Employees.

§128.6. Average Weekly Wage Adjustment for Certain Employees Who Are Also Minors, Apprentices, Trainees, or Students.

§128.7. Average Weekly Wage for School District Employees.

Chapter 140. Dispute Resolution--General Provisions

§140.1. Definitions.

§140.2. Special Accommodations.

§140.3. Expedited Proceedings.

§140.4. Conduct and Decorum.

§140.5. Correction of Clerical Error.

As a result of the review, the commission has determined that the reason for adoption of the rules continues to exist. Therefore, the commission readopts Chapters 114, 126, 128, and 140. If the commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200206136
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 19, 2002

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: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction Deadline
1	after February 1	September 1
2 - Area 1	No dates set	September **28** [~~1~~]
2 - Area 2 - Kleberg, Nueces, and northern Kenedy County above an east-west line through Katherine and Armstrong	No dates set	September **28** [~~1~~]
2 - Area 2 - Jim Wells County	No dates set	September 28
2 - Area 3 - Aransas, San Patricio County east of Highway 77, Live Oak County south and east of U.S. Highway 59.	No dates set	September 28
2 - Area 3 - San Patricio County west of Highway 77, Bee County south and east of U.S. Highway 59	No dates set	September 28
2 - Area 4	No dates set	October 1
3 - Area 1	after February 1	October 1
3 - Area 2	after February 1	October 15
4	No dates set	October 10
5	No dates set	October 20
6	No dates set	October 31
7	after February 1	November 30
8 - Area 1	after February 1	October 31
8 - Area 2	after February 1	November 30
9	No dates set	No date set
10	No dates set	February 1

Figure: 19 TAC §33.5(l)(2)(J)(iii)

REPORT OF EXPENDITURES OF PERSONS PROVIDING SERVICES TO THE STATE BOARD OF EDUCATION RELATING TO THE MANAGEMENT AND INVESTMENT OF THE PERMANENT SCHOOL FUND
December 1, _____ through November 30, ______

Individual making report ____

Employer ____

Position ____

Services Rendered to SBOE ____

Transaction 1.

DATE ____

AMOUNT, if greater than $50.00 ____

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

____

DETAILED DESCRIPTION OF EXPENDITURE ____

____

____

____

Transaction 2.

DATE ____

AMOUNT, if greater than $50.00 ____

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

____

DETAILED DESCRIPTION OF EXPENDITURE ______________________________

____

____

____

Transaction 3.

DATE ____

AMOUNT, if greater than $50.00 ___________________________________

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

____

DETAILED DESCRIPTION OF EXPENDITURE ______________________________

____

____

____

Figure: 19 TAC §109.51(b)

BID FORM FOR ACTING AS DEPOSITORY FOR ALL FUNDS

Board of Trustees
_________________________Independent School District
____
____

Board Members:

In accordance with your bid notice, the undersigned, a state or national banking corporation, hereinafter called Bidder, for privilege of acting as Depository for ALL funds of the _________________________ Independent School District, of _________________, Texas, hereinafter called the District, for a term of two years beginning ___________, and ending ___________ or until such time as a successor Depository is selected and qualified agrees to:

A. Pay interest on funds of the District placed on interest-bearing time deposits with maturities as shown below. Please provide basis points above, below or equal to the "asked" rate on the T-Bill closest to the maturity date of the time deposit being purchased as reported in the Wall Street Journal.

Single Maturity Time Deposits of more than $100,000:

MATURITY	Basis point spread over(+)/under(-) T-Bill "asked" rate
7 -- 29 Days	______________________
30 -- 59 Days	______________________
60 -- 89 Days	______________________
90 -- 179 Days	______________________
180 -- 364 Days	______________________
365 Days or More	______________________

B. All District Checking Accounts: All checking accounts as outlined on the Attachment to the bid notice will be maintained by a compensating balance by the District. A major portion of these balances will be invested in those investments permitted by the Government Code, Chapter 2256, Public Funds Investment. The excess collected balances will be moved daily by the bidder on instructions from the District into, or out of, any overnight type of investment secured by U. S. Government securities, as approved by the Depository Bank and the District. Please indicate below your recommendations as to the type of overnight investment and projected yield:

INVESTMENT	YIELD
______________________	______________________
______________________	______________________
______________________	______________________

C. In addition to the investments previously outlined, the District reserves the right to purchase, sell and invest its funds and funds under its control as authorized by the Government Code, Chapter 2256, Public Funds Investment, and in compliance with the district's investment policy. A copy of the District's Investment Policy is attached.

D. The District will maintain balances in the checking accounts to compensate the bank in full or in part for services provided. Earnings credit for these balances should be reflected on the monthly account analysis provided to the District by applying the earnings credit rate (ECR) to the average investable balance in the account for the month. The ECR should be based on the average 91-day Treasury Bill auction rate or other average money market rate for the analysis month.

1. Please specify the Bank's method of calculating monthly earnings credit. Please include the definition of balances on which earnings are applied (example: collected balance before or after reserves), as well as the money market interest rate basis for the ECR and the money market rate period (current month, previous month) used for calculation.

2. Please provide the Bank's ECR for the most recent three months.

3. If the checking accounts will be interest bearing, please explain how interest earned during the month on the account balance would be reflected on the monthly account analysis.

E. If the district sells bonds, the District reserves the right to invest these monies as allowed by law.

F. The District desires the services shown on the following pages. Please indicate which services would be included in a compensating balance and also indicate the per unit charge associated with each item. The Depository Bank will provide the following services, as indicated on the following pages, for the compensation shown.

SERVICE	CAN BE INCLUDED IN COMPENSATING BALANCE (YES) (NO)	DIRECT FEE OR SERVICE CHARGE
Account Maintenance		
Deposits/Credits Posted		
Items Deposited		
Encoding Charge		
Clearing Charge		
Debits/Checks Paid		
Arrange Canceled Checks in Numerical Sequence		
Return Items - Recleared		
Return Items - Charged back		
Stop Payment		
Daily Balance Reporting		
Via Telephone		
Via Fax		
Cash Deposit Processing		
Coin Counting & Wrapping Service		
Rolls of Coin/Straps of Currency Purchased		
Wire Transfers		
Outgoing		
Incoming		
Mail Advices		
Telephone Transfers Between Accounts		
Insufficient Funds Items		
CPA Confirmations		

SERVICE	CAN BE INCLUDED IN COMPENSATING BALANCE (YES) (NO)	DIRECT FEE OR SERVICE CHARGE
Cashier's Checks	____________	____________
FDIC Insurance	____________	____________
Research/Statement Reproduction	____________	____________
Collateral Fee	____________	____________
Detailed monthly collateral report at market value	____________	____________
One Safe Deposit Box (Size:)	____________	____________
Night depository services ____ Locking bank bags and ____ Night drop keys	____________	____________
Safekeeping services for any book-entry securities purchased by the District	____________	____________
Cash management advice on a semiannual basis	____________	____________
Preparation of monthly bank statement beginning with first day of month and ending with the last day of month, showing debits, credits and balances of each separate account and sequential listing of cashed checks within five working days of closing date.	____________	____________
Monthly account analysis statement	____________	____________
Deposit Slips	____________	____________
Coin wrappers and currency straps	____________	____________
Endorsement Stamps	____________	____________

Based on the above bank charges, please complete the attached pro forma account analysis utilizing the average ledger balance, collected balance and service volumes listed. Use your bank's reserve requirement and earning credit rate percentages that were in effect for government entities for the month of ____________________, ________.

G. For those banks that do not want to base cost of services on a fee basis that is determined by the pro forma account analysis, please indicate below the monthly checking account balance required to compensate the bank for the volume of services required by the district as listed on the account analysis form (Net Monthly Earnings/Expense Computation) and the method for computing the required monthly checking account balance.
$____________________

H. Funds availability:

1. Please include a copy of your current availability schedule.

2. What is your daily cut-off time for same day ledger credit on deposits?

3. Explain how float is calculated.

I. Although the District does not intend to have a net overdraft position throughout the course of the contract, please state the Bank's policy on overnight overdrafts and daylight overdrafts.

J. If the Depository elects to file with the District a corporate surety bond in an initial amount equal to the estimated highest daily balance of District funds determined by the Board of Trustees of the District to be on deposit with Depository during the term of this Depository Contract, then a fully executed copy of such corporate surety bond in the amount of $____________________, in the form and with the content prescribed by State Board of Education rule will be required; provided further, that:

1. that the initial amount of the corporate surety bond may rise or fall from day to day so long as all deposits of the District are fully and wholly protected;

2. the bond is made payable to the school district and is signed by the depository bank and the surety company authorized to do business in this state;

3. the bond and the surety on the bond are approved by the board of trustees of the school district; and

4. the bond is conditioned on:

(a) the faithful performance of all duties and obligations devolving by law on the depository;

(b) the payment on presentation of all checks or drafts on order of the board of trustees of the school district, in accordance with its orders entered by the board of trustees according to law;

(c) the payment on demand of any demand deposit in the depository;

(d) the payment, after the expiration of the period of notice required, of any time deposit in the depository;

(e) the faithful keeping of school funds by the depository and the accounting for the funds according to law; and

(f) the faithful paying over to the successor depository all balances remaining in the accounts.

K. If the Depository does not elect to furnish the corporate surety bond, then the Depository shall have the option of either depositing or pledging with the District, or with a trustee designated by the District, approved securities as defined in section 45.201 of the Education Code, in an amount at market value sufficient to adequately protect the funds of the District on deposit with Depository from day to day during the term of this proposal, provided that:

1. the approved securities shall be of the kind defined in the Texas Education Code and the amount pledged shall be in a total market value sufficient to adequately protect the funds of the District as directed at anytime by the Board of Trustees of the District in accordance with standards acceptable to the Texas Education Agency;

2. the pledge of approved securities shall be waived only to the extent of the exact dollar amount of Federal Deposit Insurance Corporation insurance protection for the funds of the District on deposit with the Depository from day to day, and in the event of any termination of such insurance protection this proposal shall immediately become void except as provided in 4. hereinafter;

3. the conditions of the pledge of approved securities required by this proposal are that the Depository shall faithfully perform all duties and obligations devolving upon the Depository by law and this proposal, pay upon presentation all checks or drafts drawn on order of the Board of Trustees of the District in accordance with its orders duly entered according to the laws of Texas, pay upon demand any demand deposit of the District in the Depository, pay any time deposit or certificate of deposit of the District in the Depository upon maturity or after the period of notice required, and faithfully keep, account for as required by law, and faithfully pay over, at maturity or on demand as the District may elect, to any successor depository all balances of funds of the District then on deposit with the Depository;

4. the pledge of approved securities required by this proposal shall be a continuing pledge, ceasing only upon the later of the termination of a contract or the fulfillment by the Depository of all of its duties and obligations arising out of a contract, and a continuing security interest in favor of the District shall attach immediately upon any such pledge to all proceeds of sale and to all substitutions, replacements, and exchanges of such securities, and in no event shall such continuing security interest be voided by an act of the Depository; but notwithstanding the foregoing, the Depository shall have the right, with the consent of the District, to purchase and sell, and substitute or replace, any and all of the approved securities pledged pursuant to this contract with other approved securities, provided that all of the other conditions of this proposal are adhered to by the Depository, and such pledge shall be in addition to all other remedies available in law to the District;

5. the Depository shall immediately furnish or cause to be furnished to the District original and valid safekeeping or trust receipts issued by the bank holding the approved securities pledged pursuant to the contract, marked by the holding institution on their face to show the pledge and par value as required above and provide District with the current market value of each security pledged;

6. the records of the Depository and/or the custodian of the securities pledged by the Depository may be subject to audit at any time, in accordance with Gov. Code 2257.061, Audits and Examinations by the Texas Education Agency, School Financial Audits Division, William B. Travis Building, 1701 N. Congress, Austin, Texas 78701;

7. upon any closing or failure of Depository or any event deemed by a state or federal regulatory agency to constitute a closing or failure of depository, title to all securities pledged pursuant to this depository contract shall be deemed to be vested in, and be held by the District, and the District is hereby empowered to take immediate possession of and to sell any and all of such pledged securities, whether in safekeeping at another bank or in possession of the District or the Depository, and the District is specifically so empowered by execution of this contract; and

8. the collateral pledge agreement shall conform to the United States Code Annotated (USCA), Title 12, §1823(e), so to defeat the claim of the Federal Deposit Insurance Corporation, its successor, or any other receiver to the securities.

L. Venue for any litigation arising from a contractual dispute between a Depository and the ISD shall be in the county in which the ISD has its central office, provided that this venue designation shall not be deemed a waiver of any immunity which either party hereto may be entitled to claim.

M. What is the maximum dollar amount of collateral your institution will provide for deposits belonging to the school district?_______________________

N. Does the financial institution collateralize deposits of the district based on ledger or collected balances?_______________________________

O. Please provide the following additional information:

1. State full name and address of your company and parent company if you are a subsidiary. Proposing bank shall include a list of branch locations within the district boundary.

2. Enclose annual audited financial operating statements for the past year, plus a call report of the most recent operating quarter. Members of bank holding companies include corporate annual financial statements and your individual bank's call report for the most recent operating quarter. Additional data may be requested, if necessary.

3. The district will require the selected depository to designate a bank officer as a primary contact with the school district.

Name_______________________

Telephone # ______________________

4. A pre-award interview may be conducted on site at the respective offeror's location during evaluation and prior to contract award. Please provide the District with a contact name and telephone number for arranging the pre-award interview.

5. Provide a statement of any current or potential conflicts of interest.

6. Please attach a list of any other services your Bank can render for the District. Often bids are so nearly identical that additional banking services, such as short term loans to the District or services rendered without cost to the District, can be a determining factor in the awarding of the contract. Items listed in this section should relate to the District only. Services to employees or individuals associated with the District cannot be taken into consideration.

P. This bid was requested by the District and is made by Bidder with the expressed agreement and understanding that District reserves the right to reject any and/or all bids and the further right that if any portion or provision of this bid and/or any contract between Bidder and District entered into by virtue thereto is invalid, the remainder of this bid and/or resulting contract at the option of the District shall remain in full force and effect, and not be affected by said invalid portion or provision.

Q. Attached hereto is a Cashier's Check in the sum of $__________ payable to the District. If this bid to be Depository of all District funds or to be Depository of only a designated amount of said funds is accepted, said check is to secure the performance of said bid, and if Bidder fails to enter into a contract with District as provided in this bid, then said check shall be cashed by District as liquidated damages for said failure. If the Bidder enters into a contract with the District, the District shall return the check to the Bidder. In the event this bid is not accepted, the check is to be returned to the Bidder immediately after the contract award is made.

R. the District shall be allowed by the Depository to purchase time deposits which mature after the ending date of the depository contract; however, the Depository may apply new interest rates to the time deposits after the ending date of this contract. The District shall be entitled to withdraw these time deposits without penalty at the expiration of the depository contract, but in that event, the Depository shall only be obligated to pay interest rates comparable to rates paid for the term the time deposits were actually held; provided, however, that the Depository may impose an early withdrawal penalty on a time deposit withdrawn within 6 days of creation of the deposit, to the extent required to comply with federal regulations defining time deposits.

S. The ISD and the Depository may agree to extend this contract for one additional two-year term in accordance with Section 45.205 of the Education Code. An extension under this subsection is not subject to the requirements of Section 45.206 of the Education Code.

T. Section 45.205 of the Education Code requires that this contract and any extension of this contract coincide with the ISD's fiscal year. In the event the ISD changes fiscal year in accordance with Section 44.0011 of the Education Code, the term of the contract may be shortened or extended no more than one year by agreement of the parties to coincide with the end of the new fiscal year, provided that this contract is to remain in effect until its successor is selected and has qualified. If the parties cannot agree, the ISD may at its option change the term of this contract to coincide with the end of a new fiscal year closest to its original expiration date.

U. This contract and/or an additional two-year extension of this contract and the bid attached hereto shall become binding upon the ISD and the Depository only upon acceptance by the Texas Education Agency.

Dated this the _________ day of _________________________, _______

BIDDER:

BY: (signature of authorized bank officer)

TITLE:

ADDRESS: TELEPHONE NUMBER:

NET MONTHLY EARNINGS/EXPENSE COMPUTATION

____________________ISD ____________________, _____

____________________ Account *Date*

AVERAGE LEDGER BALANCE	$____________
LESS: AVERAGE FLOAT	____________
EQUALS AVERAGE COLLECTED BALANCE	$____________
LESS: RESERVE REQUIREMENT @ ________%	____________
EQUALS INVESTABLE BALANCE	____________
X EARNINGS CREDIT RATE @ __________%	____________
EQUALS NET MONTHLY EARNINGS CREDIT	$____________

ACTIVITY SERVICE CHARGES

PROCESSING SERVICES	*AVERAGE PROJECTED MONTHLY VOLUME/UNITS*	*MONTHLY UNIT PRICE*	**TOTAL** *ESTIMATED MONTHLY SERVICE CHARGE*
Account Maintenance	________	$________	$________
Bank Statement	________	________	________
Deposits/Credit Posted	________	________	________
Items Deposited:			
Encoding Charge	________	________	________
Clearing Charge	________	________	________
Debits/Checks Paid	________	________	________
Returned Item - recleared	________	________	________
Returned Item - charged back	________	________	________
Check Serial Sort:			
Per Account	________	________	________
Per Item	________	________	________
Wire Transfer:			
Incoming Wire	________	________	________
Outgoing Wire	________	________	________
Mail Advice	________	________	________
Telephone Transfer Between Accounts	________	________	________
Stop Payment	________	________	________
Daily Balance Reporting	________	________	________
Cash & Currency Processing:			
Currency Deposited	________	________	________
Coin Deposited	________	________	________
Currency Straps Purchased	________	________	________
Coin Rolls Purchased	________	________	________
Collateral Charge	________	________	________
FDIC Insurance Charge	________	________	________
Other Charges:			
____________________	________	________	________

	TOTAL SERVICE CHARGE	$________
	NET EXCESS/(DEFICIT)	$________
	TOTAL COMPENSATING BALANCE REQUIRED FOR SERVICES	$________
*	**NET BALANCES AVAILABLE FOR OTHER SERVICE OR**	$________
	SERVICE CHARGE DUE FOR PERIOD	$________

* Please attach the formula used to determine the net balances available for other services.

ELECTRONIC BANKING PRODUCTS

Insert the following 3 pages <u>only</u> if your district is currently using electronic banking products or if you anticipate using some or all of these products during the upcoming depository contract.

ELECTRONIC BANKING PRODUCTS

Please attach explanations pertaining to the following questions relating to electronic bank products.

1. WIRE TRANSFERS

Is a personal computer access system available for initiating wire transfers?

Does the system allow initiation of repetitive and non repetitive transfers?

Is a secondary authorization security feature available?

At what time is the system accessible each day?

What procedures are in place in case of system failure?

What systems are in place to confirm receipt of incoming wires?

What other features are available through the system?

Can the cost of the service be included in compensating balances?

What is the cost of the service? How do these prices compare to telephone initiated wire transfers?

	Via Computer	Via Telephone/Fax
Monthly Maintenance	____________	____________
Line Access Charge	____________	____________
Outgoing Repetitive	____________	____________
Outgoing Non-Repetitive	____________	____________
Repetitive Internal Transfer	____________	____________
Non-Repetitive Internal Transfer	____________	____________
Other Charges:		
____________________________	____________	____________
____________________________	____________	____________
____________________________	____________	____________

2. STOP PAYMENTS

Is a personal computer access system available for initiating stop payments?

Does the system notify the user that a check has already been paid? If so, when?

At what time is the system accessible each day?

How is receipt of a stop payment order confirmed?

How long do stop payments remain in effect?

Can the cost of the service be included in compensating balances?

What is the cost of the service? How does this cost compare to telephone/written instructions?

	Via Computer	Via Telephone/Fax
Monthly Maintenance	____________	____________
Line Access Charge	____________	____________
Stop Payment Orders	____________	____________
Stop Payment Deletions	____________	____________
Other Charges:		
____________________________	____________	____________
____________________________	____________	____________
____________________________	____________	____________

3. BALANCE REPORTING

Is a personal computer access system available for balance reporting?

What information is available on the system? Attach a sample report. How does this information compare to what is available via telephone balance reporting?

At what time is the system accessible each day? What procedures are in place in case the system is down? How many days has the system been down in the past 3 months?

Can the cost of the service be included in compensating balances?

What is the cost of the service? How does this compare to telephone balance reporting?

	Via Computer	Via Telephone/Fax
Monthly Maintenance	____________	____________
Line Access Charge	____________	____________
Per Account	____________	____________
Per Debit/Credit Reported	____________	____________
Other Charges:		
____________________________	____________	____________
____________________________	____________	____________
____________________________	____________	____________

4. DIRECT DEPOSIT OF PAYROLL

Does your system support tape input? Personal computer input? Mainframe transmission?

What file format is required?

Where must tapes be delivered? What is the deadline to receive tapes for a Friday payroll?

What is the deadline for a Friday payroll for personal computer transmission? For mainframe transmission?

What is involved with correcting items? Stop payments?

Can the cost of the service be included in compensating balances?

What is the cost of the service?

Monthly Maintenance	____________
Input:	
Tape	____________
Personal Computer Transmission	____________
Mainframe Transmission	____________
Vendor	____________
ACH Credit -- two day item	____________
ACH Debit -- two day item	____________
Delete/Reversal (Stop Payment)	____________
Return Item	____________
Return Item Reclear	____________
Return Item Notification	____________
Other Charges:	
____________	____________
____________	____________

5. ACCOUNT RECONCILIATION

Do you offer tape, floppy disk, or direct data transmission output?

Do you offer full reconciliation (i.e., do you accept a tape of paid items)?

Are checks sorted in check number order as part of the reconciliation service?

What file format is required?

How soon after month-end is reconciliation available?

Can the cost of the service be included in compensating balances?

What is the cost of the service?

Partial Account Reconciliation	
Monthly maintenance	____________
Per item	____________
Serial sort	____________
Output:	
Tape	____________
Personal computer transmission	____________
Mainframe transmission	____________
Full Account Reconciliation	
Monthly maintenance	____________
Per item	____________
Serial sort	____________

Figure: 22 TAC §51.3(b)

PENALTIES FOR PRACTICE AND PROCEDURES VIOLATIONS

CATEGORY I

Not To Exceed The Following Amounts

1st: $750 **2nd: $850** **3rd: $1000**

Violation	Reference
Unlicensed Barber School	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a~~] TEX. OCC. CODE ANN. §1601.351
Enrolling Prior to Approval	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9n~~] TEX. OCC. CODE ANN. §1601.356
Unapproved Location Change	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9q~~] TEX. OCC. CODE ANN. §1601.554
[~~Working License Revoked~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9s~~]

CATEGORY II

Not To Exceed The Following Amounts

1st: $500 **2nd: $750** **3rd: $1000**

Violation	Reference
Registered Name/Location	[~~TEX. CIV. STATUTE, ARTICLE 8402~~] TEX. OCC. CODE ANN. §1601.301
Certificate, License or Permit Required	[~~TEX. CIV. STATUTE, ARTICLE 8407a~~] TEX. OCC. CODE ANN. §1601.251
Unlicensed Barber Shop	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §3D~~] TEX. OCC. CODE ANN. §1601.301
Unlawful Health Certificate	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §8~~] TEX. OCC. CODE ANN. §1601.701 [~~§1601.252~~]

[~~License From Another State/Country~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §13~~] [~~TEX. OCC. CODE ANN. §1601.255~~]
[~~Personal Affidavit Another State~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §13~~] [~~TEX. OCC. CODE ANN. §1601.255~~]

CATEGORY III

Not To Exceed The Following Amounts

1st: $500 **2nd: $750** **3rd: $1000**

Violation	Reference
Barber Tech Practicing Out of Scope	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §3~~] TEX. OCC. CODE ANN. §1601.256
Manicurist Practicing Out of Scope	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §15~~] TEX. OCC. CODE ANN. §1601.257
Unlicensed Manicure Shop	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §15a~~] TEX. OCC. CODE ANN. §1601.304
[~~Wig Specialist Out of Scope~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §16~~] [~~TEX. OCC. CODE ANN. §1601.306~~]
[~~Wig Instructor Out of Scope~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §17~~] [~~TEX. OCC. CODE ANN. §1601.259~~]
[~~Unlicensed Wig Shop~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §18a~~] [~~TEX. OCC. CODE ANN. §1601.301~~]
[~~Unlicensed Wig School~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §18.1a~~] [~~TEX. OCC. CODE ANN. §1601.358~~]
Gross Malpractice	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §21a1~~] TEX. OCC. CODE ANN. §1601.601
Knowingly Contagious Disease	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §21a2~~] TEX. OCC. CODE ANN. §1601.601

Employing Unlicensed Person	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §24b~~] TEX. OCC. CODE ANN. §1601.701 [~~§1601.652~~]
Obtaining License by Fraud	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §24c~~] TEX. OCC. CODE ANN. §1601.701 [~~§1601.652~~]
Misrepresent Enrollment	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a,2~~] TEX. OCC. CODE ANN. §1601.562

CATEGORY IV

Not To Exceed The Following Amounts

1st: $300 **2nd: $500** **3rd: $750**

Violation	Reference
Sleeping Quarters	[~~TEX. CIV. STATUTE, ARTICLE 8406~~] TEX. OCC. CODE ANN. §1601.507
False Advertisement "Barbering"	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §2b~~] TEX. OCC. CODE ANN. §1601.251
False Advertisement "Barber Pole"	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §2c~~] TEX. OCC. CODE ANN. §1601.251
False Statement	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §8~~] TEX. OCC. CODE ANN. §1601.252
False Advertisement	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §21~~] TEX. OCC. CODE ANN. §1601.601
Practicing Under Wrong Name	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §21a4~~] TEX. OCC. CODE ANN. §1601.601
Refresher Course	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9d~~] TEX. OCC. CODE ANN. §1601.354
Theory Taught	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9i~~] TEX. OCC. CODE ANN. §1601.558

Violation	Reference
Teacher on Duty	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9j~~] TEX. OCC. CODE ANN. §1601.560
Qualified Instructor	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9j~~] TEX. OCC. CODE ANN. §1601.560
Teacher Instructor Ratio	[~~TEX. CIV. STATUTE, ARTICLE 8404a, §9l~~] TEX. OCC. CODE ANN. §1601.560
School Change of Ownership	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9p~~] TEX. OCC. CODE ANN. §1601.554
Increase/Decrease Hours	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9e~~] TEX. OCC. CODE ANN. §1601.558(d)

CATEGORY V

Not To Exceed The Following Amounts

1st: $200 **2nd: $400** **3rd: $500**

Violation	Reference
Stop Blood Flow	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506

CATEGORY VIA

Not To Exceed The Following Amounts

1st: $100 **2nd: $300** **3rd: $500**

Violation	Reference
Employee with Disease	[~~TEX. CIV. STATUTE, ARTICLE 8404~~] TEX. OCC. CODE ANN. §1601.505
Expired License	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §2a~~] TEX. OCC. CODE ANN. §1601.402 [~~§1601.251~~]
Unlawful Transfer	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §15Ae~~] TEX. OCC. CODE ANN. §1601.308

Proof of Requisites	[TEX. CIV. STATUTE, ARTICLE 8407a] TEX. OCC. CODE ANN. §1601.252
Employing Cosmetologist	[TEX. CIV. STATUTE, ARTICLE 8407a, §15Af] TEX. OCC. CODE ANN. §1601.309 [§1601.408]
Expired Permit	[TEX. CIV. STATUTE, ARTICLE 8407a, §15Ag] TEX. OCC. CODE ANN. §1601.408
Location Change	[TEX. CIV. STATUTE, ARTICLE 8407a, §15Ah] TEX. OCC. CODE ANN. §1601.310
School Owner Working Chair	[TEX. CIV. STATUTE, ARTICLE 8407a, §24C-1] TEX. OCC. CODE ANN. §1601.701 [§1601.652]
School Owner Permitting A Person Other Than A Student To Work Chair	[TEX. CIV. STATUTE, ARTICLE 8407a, §24C-1] TEX. OCC. CODE ANN. §1601.701 [§1601.310]

CATEGORY VIB

Not To Exceed The Following Amounts

1st: $100 **2nd: $300** **3rd: $500**

Violation	Reference
Liquid [Liquied] Sterilizer	[TEX. CIV. STATUTE, ARTICLE 8407a, §9g] TEX. OCC. CODE ANN. §1601.353
Barber School Sign	[TEX. CIV. STATUTE, ARTICLE 8407a, §9h] TEX. OCC. CODE ANN. §1601.553
Expired School License	[TEX. CIV. STATUTE, ARTICLE 8407a, §9o] TEX. OCC. CODE ANN. §1601.407
Course Outline	[TEX. CIV. STATUTE, ARTICLE 8407a, §9u] TEX. OCC. CODE ANN. §1601.556

Student Information [~~Catalog~~]	TEX. OCC. CODE ANN. §1601.556 [~~TEX. CIV. STATUTE, ARTICLE 8407a, §9v~~]
Curriculum Content	[~~TEX. CIV. STATUTE, ARTICLE 8407a. §9x~~] TEX. OCC. CODE ANN. §1601.557
Student Cancellation	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a1~~] TEX. OCC. CODE ANN. §1601.562
Violation of Refund Policy	[~~TEX. CIV. STATUTE, ARTICLE 8407a. §9a,b1~~] TEX. OCC. CODE ANN. §1601.563
Violate Termination Ratio	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a,c~~] TEX. OCC. CODE ANN. §1601.564
Student Re-Entry	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9d~~] TEX. OCC. CODE ANN. §1601.564
Timely Refund	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a,e~~] TEX. OCC. CODE ANN. §1601.566
Interest Paid	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a,e~~] TEX. OCC. CODE ANN. §1601.566
Incomplete/Re-Entry	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9a,g~~] TEX. OCC. CODE ANN. §1601.565

CATEGORY VIC

Not To Exceed The Following Amounts

1st: $100 **2nd: $200** **3rd: $300**

Violation	**Reference**
Practice Unlicensed Facility	[~~TEX. CIV. STATUTE, ARTICLE 8402, b1~~] TEX. OCC. CODE ANN. §1601.453
Cosmetologist Practicing in Barber Shop	[~~TEX. CIV. STATUTE, ARTICLE 8402, b2~~] TEX. OCC. CODE ANN. §1601.502

Equipment	[~~TEX. CIV. STATUTE, ARTICLE 8403~~] TEX. OCC. CODE ANN. §1601.504
Combs, Brushes	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Sterilize Razor, Shears Clippers, Tweezers	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Shave Inflamed Area	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Dirty Finger Bowl	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Unlawful Location Change	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §3h~~] TEX. OCC. CODE ANN. §1601.503
16 Years Old	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §7~~] TEX. OCC. CODE ANN. §1601.253 and §1601.701 [~~§1601.252~~]

CATEGORY VID

Not To Exceed The Following Amounts

1st: $50 **2nd: $100** **3rd: $150**

Violation	**Reference**
[~~Minimum Texas Department of Health Standards~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §18c1~~] [~~TEX. OCC. CODE ANN. §1601.307~~]
[~~Additional Requirement~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §18c-2~~] [~~TEX. OCC. CODE ANN. §1601.307~~]
Failure to Display	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §24D~~] TEX. OCC. CODE ANN. §1601.701 [~~§1601.652~~]
Display of Consumer Complaint	[~~TEX. CIV. STATUTE, ARTICLE 8402, 2d~~] TEX. OCC. CODE ANN. §1601.202

Unlaundered Towel	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Dirty Head Rest	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Dirty Sponge	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
No Neck Strip	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506
Failure To Display	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §19~~] TEX. OCC. CODE ANN. §1601.451

CATEGORY VIIA

Not To Exceed The Following Amounts

1st: Warning **2nd: $500** **3rd: $1000**

Violation	Reference
All Furniture and Equipment	[~~TEX. CIV. STATUTE, ARTICLE 8405~~] TEX. OCC. CODE ANN. §1601.506

CATEGORY VIIB

Not To Exceed The Following Amounts

1st: Warning **2nd: $100** **3rd: $150**

Violation	Reference
Manager on Duty	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §3g~~] TEX. OCC. CODE ANN. §1601.502
Improper Curriculum	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9c~~] TEX. OCC. CODE ANN. §1601.354
Theory/Practical Instruction	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9f~~] TEX. OCC. CODE ANN. §1601.558

2800 Square Feet	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Twenty Chairs	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
One Lavatory per Two chairs	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353

CATEGORY VIIC

Not To Exceed The Following Amounts

1st: Warning **2nd: $100** **3rd: $200**

Violation	**Reference**
Shop Permit on Display	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §3d~~] TEX. OCC. CODE ANN. §1601.501
Classroom Requirements	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Library Facilities	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Drinking Fountain	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Fire Fighting Equipment	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Student Requirements	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9d~~] TEX. OCC. CODE ANN. §1601.260
Progress Reports	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9e~~] TEX. OCC. CODE ANN. §1601.561
Completion Rates	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9e~~] TEX. OCC. CODE ANN. §1601.561

Violation	Reference
Job Placement	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.561
Hard Surface Floor	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
Lighting	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353

CATEGORY VIID

Not To Exceed The Following Amounts

1st: Warning **2nd: $50** **3rd: $100**

Violation	**Reference**
Adequate Latherizers	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §9g~~] TEX. OCC. CODE ANN. §1601.353
[~~Required Forms~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §10, 1~~] [~~TEX. OCC. CODE ANN. §1601.252~~]
[~~Photographs~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §10, 2~~] [~~TEX. OCC. CODE ANN. §1601.261~~]
[~~Application Fee~~]	[~~TEX. CIV. STATUTE, ARTICLE 8407a, §10, 3~~] [~~TEX. OCC. CODE ANN. §1601.261~~]

GENERAL RULES OF PRACTICE AND PRACEDURES

CATEGORY I

Not To Exceed The Following Amounts

1st: $750 **2nd: $850** **3rd: $1000**

CATEGORY II

Not To Exceed The Following Amounts

1st: $500 **2nd: $750** **3rd: $1000**

Violation	**Reference**
Right of Access	§51.6

CATEGORY III

Not To Exceed The Following Amounts

1st: $300	2nd: $500	3rd: $750

Violation	Reference
Barber Advertisements (Yellow Pages)	§51.101

CATEGORY IV

Not To Exceed The Following Amounts

1st: $200	2nd: $400	3rd: $500

CATEGORY VA

Not To Exceed The Following Amounts

1st: $100	2nd: $300	3rd: $500

CATEGORY VB

Not To Exceed The Following Amounts

1st: $100	2nd: $200	3rd: $300

Violation	Reference
Animals Prohibited	§51.96

CATEGORY VC

Not To Exceed The Following Amounts

1st: $50	2nd: $100	3rd: $150

Violation	Reference
Current Address	§51.4

CATEGORY VIA

Not To Exceed The Following Amounts

1st: Warning	2nd: $500	3rd: $1000

CATEGORY VIB

Not To Exceed The Following Amounts

1st: Warning	2nd: $300	3rd: $500

Violation	Reference
Barber School Business Hours	§51.14
Other Business Prohibited (School or College)	§51.40
Booth Rental	§51.97

CATEGORY VIC

Not To Exceed The Following Amounts

1st: Warning	2nd: $100	3rd: $200

Violation	Reference
Student Equipment	§51.16
Dress Code	§51.94

CATEGORY VID

Not To Exceed The Following Amounts

1st: Warning	2nd: $50	3rd: $100

Violation	Reference
Student Certification	§51.23
Other Business Prohibited (Shop)	§51.95

Figure: 30 TAC §290.45(d)(1)

Table A

Type of Establishment	Gallons/Person
Restaurants	18
Schools without cafeterias, gymnasiums, or showers	18
Schools with cafeterias, but no gymnasiums or showers	24
Schools with cafeterias, gymnasiums, and showers	30
Youth camps without flush toilets, showers, or dining halls	6
Youth camps with flush toilets, but no showers or dining halls	24
Youth camps with flush toilets, showers, and dining halls	42
Office buildings	18
Hospitals (based on number of beds)	720
Institutions, other than hospitals	240
Factories (exclusive of industrial processes)	24
Parks	6
Swimming pools	12
Country clubs	120
Airports (per passenger)	6
Self-service laundries	60
Service stations/stores	12

It should be noted that this table is used to determine minimum capacities only and that the overriding criteria will be the ability of the system to maintain a minimum pressure of 35 pounds per square inch (psi) under normal operating conditions. Minimum distribution pressure shall not be less than 20 psi at any time.

Figure: 30 TAC §293.56(f)

ROCK OF GIBRALTAR BANK
LETTER OF CREDIT

GREEN ACRES MUNICIPAL
UTILITY DISTRICT
ONE HOLLOW LOG LANE
MEGALOPOLIS, TEXAS 77000

Irrevocable Credit No. 1
Amount: $250,000

GENTLEMEN:

You are hereby authorized to value on ROCK OF GIBRALTAR BANK for account of ALL AMERICAN HOMES, INC. up to an aggregate amount of ------ TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ------ available by your drafts at ------ SITE ------ to be accompanied by the original of this letter of credit and the following documents:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for $100,000 or more) that All American Homes Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the Street and Utility Construction Agreement dated December 1, 1980. (Required only for draft No. 1), and a written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West Subdivision in the amount shown on the draft(s); or

2. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for $100,000 or more) that All American Homes, Inc. has failed to renew or replace this letter of credit within forty-five (45) days prior to its expiration date; or

3. Written statement signed by the President or Vice president of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for $100,000 or more) that All American Homes, Inc. has commenced any proceeding, voluntary or involuntary, or that any proceeding has been commenced against All American Homes, Inc. involving bankruptcy, insolvency, reorganization, liquidation or dissolution of All American Homes, Inc., that any receiver has been appointed by All American Homes, Inc., or that All American Homes, Inc. has made a general assignment for the benefit of creditors.

Multiple drafts may be presented.

Drafts must be presented to drawee bank not later than May 31, 1983, all drafts must state on their face "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

We hereby engage with you, that all drafts drawn under and in compliance with the terms of this credit will be duly honored, if drawn and presented for payment at our office in Megalopolis, Texas, on or before the expiration date of this credit.

We further engage with you that without further notice, if so requested by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for $100,000 or more), we shall deposit in a special account in the name of the district, the remaining face amount of the letter of credit if the letter of credit is:

1. not renewed for an additional year at least 45 days prior to its date of expiration;

2. not called upon in its entirety at least 30 days prior to its date of expiration;

3. not found to be unnecessary by the executive director of the Texas Commission on Environmental Quality at least 45 days prior to its date of expiration; or

4. unless the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

Very truly yours,

____

Authorized Signature

Figure: 30 TAC §293.103

NOTICE OF NAME CHANGE OF BASS FISHERMAN'S MUNICIPAL
UTILITY DISTRICT TO JOY COUNTY MUNICIPAL
UTILITY DISTRICT NO. 1

Notice is hereby given that Bass Fisherman's Municipal Utility District obtained approval of the Texas Commission on Environmental Quality on January 1, 1996 to change its name to Joy County Municipal Utility District No. 1. This change takes effect immediately. This change does not affect any outstanding bonds, obligations, or other indebtedness of the District. Any questions concerning the change should be directed to the District's manager,

at (a/c) phone number, or the District's attorney, , at (a/c) phone number.

Figure: 40 TAC §745.129

Exempt Miscellaneous Programs	Criteria for Exemption
(1) Neighborhood Recreation Program	(A) The program provides activities designed for recreational purposes for children ages 5-13; (B) The services and activities are not structured to provide after-school child day care; (C) The governing body of the program must adopt standards for care. At a minimum, these standards must include staffing ratios, staff training, and health and safety standards and mechanisms for assessing and enforcing the program's compliance with the standards; (D) The program does not collect compensation for its services; (E) Children participating in the activities are free to join or leave the program at will. If the program provides transportation from school, children may choose whether to use the transportation from school and when to leave the program and walk home without adult supervision; (F) The program must require all parents to sign a statement allowing their children to come and go at will from the program; (G) The program must inform each parent that Licensing does not regulate the operation; (H) The program must provide a process to receive and resolve parental complaints; and (I) The program must conduct criminal background checks for all employees and volunteers who work with children. The background checks must include information from the Department of Public Safety.
(2) Caregiver Has Written Agreement with a Parent to Provide Residential Care	(A) A child may live with someone other than a relative if the non-relative caregiver does not care for more than one child or sibling group; (B) The caregiver had a prior relationship with the child(ren) or family of the child(ren); (C) The caregiver does not receive compensation or solicit donations for the care of the child or sibling group; and (D) The caregiver has a written agreement with the parent to care for the child or sibling.
(3) Emergency Shelter for Minor Mothers	(A) The emergency shelter is providing shelter to minor mothers; (B) The mothers are the sole support of their children; (C) The shelter provides care for the mother and her child(ren) only when there is an immediate danger to the physical health or safety of the mother or her child(ren); and (D) The shelter does not provide care for more than 15 days unless the parent of the minor mother consents, or the minor mother has qualified for Temporary Assistance for Needy Families and is on the waiting list for housing assistance.

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.

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 September 13, 2002, through September 19, 2002. The public comment period for these projects will close at 5:00 p.m. on October 25, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: San Luis West Inc.; Location: The project is located at Churchill Bayou and Cold Pass, approximately 1.5 miles west of San Luis Pass, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Christmas Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 291400; Northing: 3216500. Project Description: The applicant proposes to construct 100 linear feet of bulkhead above mean high water (MHW), landward of existing smooth cordgrass (Spartina alterniflora), and southwest of an existing building, instead of 100 linear feet of riprap previously authorized but not constructed. CCC Project No.: 02-0300-F1; Type of Application: U.S.A.C.E. permit application #18674(02) 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).

Applicant: David Woolverton; Location: The project is located in the Laguna Madre, adjacent to 714 Michigan, Laguna Heights, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Laguna Vista, Texas. Approximate UTM Coordinates: Zone 14; Easting: 674677; Northing: 2885516. Project Description: The project involves the unauthorized discharge of fill material into approximately 0.2-acre of waters of the U.S., specifically wetlands adjacent to the Laguna Madre. The unauthorized fill directly impacted approximately 0.2-acre of adjacent wetlands dominated by black mangrove (Avicennia germinans), saltwort (Batis maritima), sea ox-eye daisy (Borrichia frutescens), and seashore paspalum (Paspalum vaginatum). The fill was placed to repair erosion damage to the applicant's property and to prevent additional erosion. CCC Project No.: 02-0301-F1; Type of Application: U.S.A.C.E. permit application #22457 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).

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-200206234
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 25, 2002

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Intent to Amend Contract

Pursuant to Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intention to amend the existing contract between SCT Software & Resource Management Corporation (Contractor) and the Texas Prepaid Higher Education Tuition Board.

Effective June 12, 2001, the Comptroller, acting on behalf of the Texas Prepaid Higher Education Tuition Board, and the Contractor entered into a contract for records administration and management services. The initial term of the contract was from June 12, 2001 through August 31, 2002. The Comptroller issues this notice of intent to renew the contract for the period from September 1, 2002 through August 31, 2003, and to increase the total amount payable under the contract. Total payments under the contract, including all renewal periods, shall not exceed $3,108,636.

For further information, please contact: Pamela Ponder, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas, 78774, telephone number: (512) 475-0498, fax: (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

TRD-200206230
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 25, 2002

♦ ♦ ♦

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 09/30/02 - 10/06/02 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 09/30/02 - 10/06/02 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-200206219
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 24, 2002

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning the Public Charter Schools Start-Up Grant Applications for Generation Eight

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications through Standard Application System (SAS) #A527 from campus charters, campus program charters, and open-enrollment charter schools as established by Texas Education Code, Chapter 12, to increase the understanding of the public charter schools model by providing financial assistance for the design and implementation of public charter schools. Applications will be mailed directly to each eligible open-enrollment charter school.

Description. In accordance with the purpose of the federal Public Charter Schools Start-Up Grant Program, funds may be used for post-award planning and design of the school's educational program, which may include refining the desired educational results and methods for measuring progress toward achieving those results and providing professional development for teachers and other staff who will work in the public charter school. Funds may also be used for the initial implementation of the charter school, which may include: (1) informing the community about the public charter school; (2) acquiring necessary equipment and educational materials and supplies; (3) acquiring or developing curriculum materials; and (4) funding other initial operational costs that cannot be met from state or local sources. Applicants must address each requirement as specified in RFA #701-02-038 to be eligible for funding.

Dates of Project. The federal Public Charter Schools Start-Up Grant Program will be implemented from February 1, 2003, to July 31, 2003. Applicants should plan for a starting date of no earlier than February 1, 2003, and an ending date of no later than July 31, 2003.

Project Amount. Each Generation-Eight charter school will be eligible to receive a maximum of $100,000. Start-up funding in any subsequent year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the commissioner of education and appropriations by the U.S. Congress. This project is funded 100% from the Public Charter Schools federal funds.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. The TEA is not committed to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing an application.

Requesting the Application. A copy of the complete RFA #701-02-038 will be mailed to each eligible open-enrollment charter school approved by the State Board of Education. Campus charters, campus program charters, and other interested parties may obtain a complete copy of RFA#701-02-038 by writing to the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Provide your name, complete mailing address, and phone number, including area code. Please refer to the RFA number and title in your request. The complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us./charter/rfa.htm for viewing and downloading.

Further Information. For clarifying information about the RFA or SAS, contact Mary Perry, Division of Charter Schools, TEA, (512) 463-9575.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA no later than 5:00 p.m. (Central Time), Thursday, November 21, 2002, to be considered for funding.

TRD-200206227
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: September 25, 2002

♦ ♦ ♦

Request for Proposals Concerning Evaluation of Education Technology Pilot Projects

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-03-001 from nonprofit organizations, institutions of higher education, private companies, and individuals. Historically underutilized businesses (HUBs) are encouraged to submit proposals. Subcontracting opportunities are possible for this contract and contractors are encouraged to subcontract with HUBs.

Description. The TEA is requesting proposals for the evaluation of four education technology projects currently being conducted by the agency and its partners. These projects are piloting the use of personal digital assistant-based and/or web-based resources for student assessment, curriculum enhancement and professional development purposes. The TEA is seeking both qualitative and quantitative evaluation of these projects.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than November 18, 2002, and an ending date of no later than June 30, 2003.

Project Amount. One contractor(s) will be selected to receive a maximum of $100,000 during the contract period. Subsequent project funding will be based on satisfactory progress of first-year objectives and activities and on general budget approval.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is

executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-03-001 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; by e-mailing dcc@tea.state.tx.us; or by downloading it at http://www.tea.state.tx.us/rfx/rfp70103001. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code.

Further Information. For clarifying information about this RFP, contact Lavonda Barnard, Division of Education Technology, TEA, (512) 463-9400.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, November 12, 2002, to be considered for funding.

TRD-200206228
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: September 25, 2002

Request for Proposals Concerning Fiscal Note Production Services

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-02-040 from nonprofit organizations, private companies, and individuals. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this project is to produce multi-year cost/savings estimation and analysis documents that comply with the format specified by the Legislative Budget Board for the Texas Legislature's 78th Regular Session. The selected contractor will be expected to produce multi-year cost/savings estimation and analysis documents that meet TEA specifications for a variety of proposed legislation affecting public education. The contractor will be required to complete each assigned document within a 48-hour to 72-hour period unless the timeline is specifically adjusted by TEA. Shorter timelines may be required for some assignments. The contractor will not be guaranteed either a minimum or maximum number of assignments. In producing these documents, the contractor will be required to demonstrate in-depth knowledge of Texas' public education system, including the state's school finance system, and to extract or collect any additional data needed to produce the documents from sources such as TEA automated systems, TEA and other external websites, and communications with TEA staff, local school districts, regional education service centers, or other affected parties. The contractor will be expected to provide office space and a specified minimum level of office equipment.

Proposers must meet or exceed the following criteria: (1) a minimum of five years work experience in preparing cost/savings estimates of proposed legislation affecting public education; (2) a minimum of three years work experience in mainframe-based data extraction and analysis using programming languages such as SAS and SQL; (3) a minimum of two years work experience involving communications with individuals and entities concerning the estimation of costs associated with proposed legislation, such as staff of the TEA, Legislative Budget Board, and local school districts; and (4) the ability to produce an accurate and complete multi-year cost/savings estimation and analysis document within a 72-hour or shorter time frame. All proposers will be required to produce a sample cost estimation document based on a piece of simulated legislation provided by TEA. All proposers will be provided with the same piece of simulated legislation. The completed sample must meet a format specified by TEA and must be returned to TEA within 72 hours of the time it is assigned to the proposer.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates which shall not exceed 26 working weeks. Proposers should plan for a starting date of no earlier than January 13, 2003, and an ending date of no later than June 2, 2003.

Project Amount. One contractor will be selected to receive a maximum of $25,000 during the contract period. Subsequent project funding will be based on satisfactory progress of first-year objectives and activities and on general budget approval.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer, the ability of the proposer to complete the services/activities in the manner and time frame requested, reviewers' judgment of the quality of the sample document produced by the proposer, and the reasonableness of the proposed fee. Special consideration will be given to qualified proposals submitted by certified HUBs. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP# 701-02-040 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFP number and title in your request. Provide your name, complete mailing address, and phone number including area code.

Further information. For clarifying information about the RFP, contact Janét Spurgin, Department of School Finance & Fiscal Analysis, TEA, (512) 463-8994.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, December 5, 2002, to be considered.

TRD-200206229
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: September 25, 2002

Commission on State Emergency Communications

Proposed Distribution Percentages for Fiscal Year 2003

The following chart is the PROPOSED Fiscal Year 2003 schedule of distribution percentages for the 9-1-1 Wireless Service Fee for all 9-1-1 jurisdictions, except those in the North Central Texas Council of Governments (NCTCOG). Jurisdictions in the NCTCOG region will have their populations allocated by the NCTCOG and should contact them, if they have questions. NCTCOG will provide the Commission staff the allocations for it's region. Those will be incorporated into the distribution chart that will be presented to the Commission for consideration of

adoption. Once approved by the Commission, these percentages will be used for wireless distributions made after November 10, 2002.

The population figures were taken from the 2001 Population Estimates, published by the Department of Rural Sociology at Texas A&M University, see the footnote to the chart for the location of the data. If a jurisdiction wishes to change the population schedule, it must show the change to itself and the change to another jurisdiction, the net affect of the two changes being zero on the total schedule. Changes must be coordinated between 9-1-1 jurisdictions before reporting them back to the Commission.

Changes to the schedule must be received at the Commission's office by 5:00 p.m., October 4, 2002. Once all changes have been incorporated into the schedule, it will be presented to the Commission for consideration at its October 10, 2002 public meeting.

Change requests can be sent to Brian P. Millington by email (brian.millington@csec.state.tx.us) or by fax (512.305.6937), or to the following address: 333 Guadalupe Street, Suite 2-212 Austin, Texas 78701-3942.

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross	District & HRC Adjustments		Adjusted	Distribution
	Population	Name	Population	Population	Percentage
Atascosa	39,701			39,701	
Bandera	18,168			18,168	
Frio	16,375			16,375	
Gillespie	21,186			21,186	
Karnes	15,374			15,374	
Kendall	24,636			24,636	
Wilson	33,657			33,657	
AACOG Total	**169,097**			**169,097**	0.7930%
Bowie	90,651			90,651	
Cass	30,176			30,176	
Delta	5,359			5,359	
Franklin	9,541			9,541	
Hopkins	31,909			31,909	
Lamar	48,688			48,688	
Morris	12,959			12,959	
Red River	14,232			14,232	
Titus	28,415			28,415	
ATCOG Total	**271,930**			**271,930**	1.2752%
Burleson	16,634			16,634	
Grimes	24,157			24,157	
Leon	15,471			15,471	
Madison	13,014			13,014	
Robertson	15,992			15,992	
Washington	30,583			30,583	
BVDC Total	**115,851**			**115,851**	0.5433%
Bastrop	62,042			62,042	
Blanco	8,679			8,679	
Burnet	35,502			35,502	
Caldwell	33,322			33,322	
Fayette	22,377			22,377	
Hays	104,856			104,856	
Lee	16,162			16,162	
Llano	17,427			17,427	
Travis	834,450			834,450	
Williamson	270,884			270,884	
CAPCO Total	**1,405,701**			**1,405,701**	6.5918%
Bell	243,386			243,386	
Coryell	75,213			75,213	
Hamilton	8,272			8,272	
Lampasas	18,345			18,345	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross	District & HRC Adjustments		Adjusted	Distribution
	Population	Name	Population	Population	Percentage
Milam	24,808			24,808	
Mills	5,158			5,158	
San Saba	6,329			6,329	
CTCOG Total	**381,511**			**381,511**	**1.7890%**
Aransas	22,743			22,743	
Bee	32,330			32,330	
Brooks	7,839			7,839	
Duval	13,124			13,124	
Jim Wells	39,805			39,805	
Kenedy	413			413	
Kleberg	31,420			31,420	
Live Oak	12,304			12,304	
McMullen	853			853	
Nueces	314,573	Corpus Christi	(278,193)	36,380	
Refugio	7,743			7,743	
San Patricio	67,326	Portland	(14,959)		
		Aransas Pass	(8,202)	44,165	
CBCOG Total	**550,473**			**249,119**	**1.1682%**
Coke	3,789			3,789	
Concho	3,944			3,944	
Crockett	4,092			4,092	
Irion	1,762			1,762	
Kimble	4,511			4,511	
McCulloch	8,047			8,047	
Mason	3,772			3,772	
Menard	2,399			2,399	
Reagan	3,203			3,203	
Schleicher	2,966			2,966	
Sterling	1,405			1,405	
Sutton	4,098			4,098	
Tom Green	103,943			103,943	
CVCOG Total	**147,931**			**147,931**	**0.6937%**
Angelina	81,144			81,144	
Houston	23,308			23,308	
Jasper	35,698			35,698	
Nacogdoches	59,671			59,671	
Newton	15,038			15,038	
Polk	42,134			42,134	
Sabine	10,332			10,332	
San Augustine	8,975			8,975	
San Jacinto	22,974			22,974	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Shelby	25,282			25,282	
Trinity	14,023			14,023	
Tyler	20,804			20,804	
DETCOG Total	**359,383**			**359,383**	**1.6853%**
Anderson	55,013			55,013	
Camp	11,794			11,794	
Cherokee	47,238	Reklaw	(334)	46,904	
Gregg	112,507	Kilgore	(11,462)		
		Longview	(73,739)	27,306	
Marion	11,014			11,014	
Panola	22,612	Tatum	(1,179)	21,433	
Rains	9,790			9,790	
Upshur	35,921			35,921	
Van Zandt	49,265			49,265	
Wood	37,433			37,433	
ETCOG Total	**392,587**			**305,873**	**1.4343%**
De Witt	20,027			20,027	
Goliad	7,101			7,101	
Gonzales	18,872			18,872	
Jackson	14,424			14,424	
Lavaca	19,383			19,383	
Victoria	85,186			85,186	
GCRPC Total	**164,993**			**164,993**	**0.7737%**
Bosque	17,549			17,549	
Falls	18,525			18,525	
Freestone	18,271			18,271	
Hill	33,070			33,070	
Limestone	22,295			22,295	
HOTCOG Total	**109,710**			**109,710**	**0.5145%**
Brazoria	248,171	Pearland	(40,044)	208,127	
Chambers	27,094			27,094	
Colorado	20,679			20,679	
Fort Bend	370,807	Katy	(12,609)		
		Meadows	(5,019)		
		Missouri City	(56,066)		
		Stafford	(16,508)		
		Sugar Land	(67,465)	213,140	
Liberty	72,501			72,501	
Matagorda	38,173			38,173	
Walker	62,503			62,503	

	Gross Population	District & HRC Adjustments Name	District & HRC Adjustments Population	Adjusted Population	Distribution Percentage
Waller	33,266	Waller	(2,118)	31,148	
Wharton	41,485			41,485	
HGAC Total	**914,679**			**714,850**	3.3522%
Hidalgo	591,083			591,083	
Willacy	20,170			20,170	
LRGVDC Total	**611,253**			**611,253**	2.8664%
Dimmit	10,160			10,160	
Edwards	2,122			2,122	
Kinney	3,409			3,409	
La Salle	5,825			5,825	
Maverick	48,438			48,438	
Real	3,092			3,092	
Uvalde	26,165			26,165	
Val Verde	45,494			45,494	
Zavala	11,585			11,585	
MRGDC Total	**156,290**			**156,290**	0.7329%
Archer	9,008			9,008	
Baylor	4,083			4,083	
Clay	10,966			10,966	
Cottle	1,801			1,801	
Foard	1,573			1,573	
Hardeman	4,641			4,641	
Jack	8,776			8,776	
Montague	19,193			19,193	
Young	17,872			17,872	
NRPC Total	**77,913**			**77,913**	0.3654%
Collin	538,574	Dallas	(50,822)		
		Frisco	4,046		
		Garland	(16)		
		Plano	(219,074)		
		Richardson	(21,380)		
		Wylie	(14,882)	236,446	
Dallas		Balch Springs	19,375		
		Cockrell Hill	4,443		
		Sachse	7,898		
		Seagoville	10,817		
		Wilmer	3,393	45,926	
Ellis	116,203	Cedar Hill	(642)		
		Ennis	(16,045)		
		Glenn Heights	(1,589)		

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	District & HRC Adjustments Population	Adjusted Population	Distribution Percentage
		Grand Prairie	(30)		
		Mansfield	(280)		
		Ovilla	272	97,889	
Erath	32,983			32,983	
Hood	42,315			42,315	
Hunt	77,822			77,822	
Johnson	132,084	Burleson	(17,554)		
		Mansfield	(561)	113,969	
Kaufman	75,673	Combine	626	76,299	
Navarro	46,075			46,075	
Palo Pinto	27,398			27,398	
Parker	92,307	Azle (16%)	(1,536)	90,771	
Rockwall	47,628	Dallas	(93)		
		Rowlett	(7,120)		
		Wylie	(310)	40,105	
Somervell	7,083			7,083	
Wise	50,403			50,403	
NCTCOG Total	**1,286,548**			**985,484**	**4.6213%**
Andrews	12,963			12,963	
Borden	662			662	
Crane	3,791			3,791	
Dawson	14,844			14,844	
Gaines	14,329			14,329	
Glasscock	1,414			1,414	
Loving	67			67	
Martin	4,730			4,730	
Pecos	16,543			16,543	
Reeves	12,797			12,797	
Terrell	1,020			1,020	
Upton	3,290			3,290	
Ward	10,670			10,670	
Winkler	7,040			7,040	
PBRPC Total	**104,160**			**104,160**	**0.4884%**
Armstrong	2,134			2,134	
Briscoe	1,790			1,790	
Carson	6,451			6,451	
Castro	8,040			8,040	
Childress	7,707			7,707	
Collingsworth	3,153			3,153	
Dallam	6,088			6,088	
Deaf Smith	18,336			18,336	
Donley	3,724			3,724	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003
PROPOSAL FOR COMMENT

	Gross	District & HRC Adjustments		Adjusted	Distribution
	Population	Name	Population	Population	Percentage
Gray	22,585			22,585	
Hall	3,792			3,792	
Hansford	5,248			5,248	
Hartley	5,660			5,660	
Hemphill	3,302			3,302	
Hutchinson	23,665			23,665	
Lipscomb	2,984			2,984	
Moore	20,290			20,290	
Ochiltree	9,109			9,109	
Oldham	2,139			2,139	
Parmer	9,783			9,783	
Roberts	849			849	
Sherman	3,230			3,230	
Swisher	8,405			8,405	
Wheeler	5,176			5,176	
PRPC Total	**183,640**			**183,640**	**0.8611%**
Brewster	8,905			8,905	
Culberson	2,867			2,867	
Hudspeth	3,411			3,411	
Jeff Davis	2,242			2,242	
Presidio	7,366			7,366	
RGCOG Total	**24,791**			**24,791**	**0.1163%**
Hardin	48,705			48,705	
Jefferson	251,455			251,455	
Orange	85,048			85,048	
SETRPC Total	**385,208**			**385,208**	**1.8064%**
Bailey	6,471			6,471	
Cochran	3,728			3,728	
Crosby	7,006			7,006	
Dickens	2,762			2,762	
Floyd	7,669			7,669	
Garza	4,979			4,979	
Hale	36,428	Abernathy	(2,842)		
		Plainview	(22,234)	11,352	
Hockley	22,404			22,404	
Kent	850			850	
King	341			341	
Lamb	14,787			14,787	
Lynn	6,417			6,417	
Motley	1,403			1,403	
Terry	12,450			12,450	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Yoakum	7,258			7,258	
SPAG Total	**134,953**			**109,877**	**0.5152%**
Jim Hogg	5,305			5,305	
Starr	54,591			54,591	
Webb	201,256			201,256	
Zapata	12,593			12,593	
STDC Total	**273,745**			**273,745**	**1.2837%**
Cooke	37,125			37,125	
Fannin	31,752			31,752	
Grayson	112,177	Denison	(23,009)		
		Sherman	(35,646)	53,522	
TCOG Total	**181,054**			**122,399**	**0.5740%**
Brown	37,963			37,963	
Callahan	13,017			13,017	
Coleman	9,156			9,156	
Comanche	14,019			14,019	
Eastland	18,151			18,151	
Fisher	4,221			4,221	
Haskell	6,044			6,044	
Jones	20,741			20,741	
Knox	4,093			4,093	
Mitchell	9,724			9,724	
Nolan	15,547			15,547	
Runnels	11,438			11,438	
Scurry	16,043			16,043	
Shackelford	3,297			3,297	
Stephens	9,783			9,783	
Stonewall	1,704			1,704	
Throckmorton	1,838			1,838	
WCTCOG Total	**196,779**			**196,779**	**0.9228%**
Smith	178,119			178,119	
9-1-1 Network of East Texas	**178,119**			**178,119**	**0.8353%**
Taylor	126,555			126,555	
Abilene/Taylor Cty. 9-1-1	**126,555**			**126,555**	**0.5935%**
Austin	24,031			24,031	
Austin Cty. Emg. Comm. District	**24,031**			**24,031**	**0.1127%**
Bexar	1,415,441			1,415,441	
Comal	81,708			81,708	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003
PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Guadalupe	92,303			92,303	
Bexar Metro 9-1-1 Network District	**1,589,452**			**1,589,452**	**7.4535%**
Brazos	155,449			155,449	
Brazos Cty. Emerg. Comm. District	**155,449**			**155,449**	**0.7290%**
Calhoun	20,600			20,600	
Calhoun Cty. 9-1-1 Emg. Comm. Distric	**20,600**			**20,600**	**0.0966%**
Cameron	344,621			344,621	
Cameron Cty. Emg. Comm. District	**344,621**			**344,621**	**1.6160%**
Dallas	2,248,226	Addison	(14,166)		
		Balch Springs	(19,375)		
		Carrollton	(49,309)		
		Cedar Hill	(31,451)		
		Cockrell Hill	(4,443)		
		Combine	(626)		
		Coppell	(35,652)		
		Dallas	(1,111,949)		
		DeSoto	(37,646)		
		Duncanville	(36,081)		
		Farmers Brancl	(27,508)		
		Garland	(215,752)		
		Glenn Heights	(5,635)		
		Grand Prairie	(99,393)		
		Highland Park	(8,842)		
		Hutchins	(2,805)		
		Irving	(191,615)		
		Lancaster	(25,894)		
		Mesquite	(124,523)		
		Ovilla	(272)		
		Richardson	(70,422)		
		Rowlett	(37,383)		
		Sachse	(7,898)		
		Seagoville	(10,817)		
		University Park	(23,324)		
		Wilmer	(3,393)		
		Wylie	(310)	51,742	
Dallas SO (District)	**2,248,226**			**51,742**	**0.2426%**
Denton	466,483	Carrollton	49,309		
		Coppell	(306)		
		Dallas	(25,716)		
		Fort Worth	(3)		

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	District & HRC Adjustments Population	Adjusted Population	Distribution Percentage
		Frisco	(4,046)		
		Plano	(2,956)		
		Southlake	(409)	482,356	
Denco Area 9-1-1 District	**466,483**			**482,356**	**2.2619%**
El Paso	688,263			688,263	
El Paso Cty. 9-1-1 District	**688,263**			**688,263**	**3.2275%**
Ector	120,856			120,856	
Emg. Comm. District of Ector Cty.	**120,856**			**120,856**	**0.5667%**
Galveston	255,210	Friendswood	(30,275)		
		League City	(47,788)	177,147	
Galveston Cty. Emg. Comm. District	**255,210**			**177,147**	**0.8307%**
Harris	3,461,662	Friendswood	30,275		
		Katy	12,609		
		League City	47,788		
		Meadows	5,019		
		Pearland	40,044		
		Stafford	16,508		
		Sugar Land	67,465		
		Waller	2,118		
		Missouri City	56,066	3,739,554	
Greater Harris Cty. 9-1-1 Emg. Networl	**3,461,662**			**3,739,554**	**17.5360%**
Henderson	74,714			74,714	
Henderson Cty. 9-1-1 Comm. District	**74,714**			**74,714**	**0.3504%**
Howard	33,892			33,892	
Howard Cty. 9-1-1 Comm. District	**33,892**			**33,892**	**0.1589%**
Kerr	44,275			44,275	
Kerr Cty. Emg. 9-1-1 Network	**44,275**			**44,275**	**0.2076%**
Lubbock	244,940	Abernathy	2,842		
		Plainview	22,234	270,016	
Lubbock Cty. Emg. Comm. District	**244,940**			**270,016**	**1.2662%**
McLennan	215,532			215,532	
McLennan Cty. Emg. Assistance Distri	**215,532**			**215,532**	**1.0107%**
Medina	39,974			39,974	
Medina Cty. 9-1-1 District	**39,974**			**39,974**	**0.1875%**
Midland	116,187			116,187	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross Population	District & HRC Adjustments Name	District & HRC Adjustments Population	Adjusted Population	Distribution Percentage
Midland Emg. Comm. District	**116,187**			**116,187**	**0.5448%**
Montgomery	312,366			312,366	
Montgomery Cty. Emg. Comm. Distric	**312,366**			**312,366**	**1.4648%**
Wichita	131,854			131,854	
Wilbarger	14,477			14,477	
Wichita-Wilbarger 9-1-1 Comm. Distric	**146,331**			**146,331**	**0.6862%**
Potter	114,299			114,299	
Randall	106,169			106,169	
Potter-Randall Cty. Emg. Comm. Distri	**220,468**			**220,468**	**1.0338%**
Tarrant	1,486,771	Azle	1,536		
		Burleson	17,554		
		Fort Worth	3		
		Mansfield	841		
		Grand Prairie	99,423		
		Irving	191,615		
		Southlake	409	1,798,152	
Tarrant Cty. 9-1-1 District	**1,486,771**			**1,798,152**	**8.4321%**
Harrison	62,235			62,235	
Rusk	47,626	Reklaw	334		
		Tatum	1,179	49,139	
Texas Eastern 9-1-1 Network	**109,861**			**111,374**	**0.5223%**
Cedar Hill			32,093		
DeSoto			37,646		
Duncanville			36,081	105,820	
Southwest Regional Communications Center				**105,820**	**0.4962%**
Addison Police Department			14,166	14,166	**0.0664%**
Aransas Pass Police Department			8,202	8,202	**0.0385%**
City of Dallas Emg. Comm. Office			1,188,580	1,188,580	**5.5736%**
City of Longview PSAP			73,739	73,739	**0.3458%**
Coppell Police Department			35,958	35,958	**0.1686%**
Corpus Christi			278,193	278,193	**1.3045%**
Denison Fire Department			23,009	23,009	**0.1079%**
Ennis Police Department			16,045	16,045	**0.0752%**
Farmers Branch Police Department			27,508	27,508	**0.1290%**
Garland Police Department			215,768	215,768	**1.0118%**
Glenn Heights Police Department			7,224	7,224	**0.0339%**
Highland Park Department of Public Safety			8,842	8,842	**0.0415%**
Hutchins Police Department			2,805	2,805	**0.0132%**

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2002 - November 9, 2003

PROPOSAL FOR COMMENT

	Gross	District & HRC Adjustments		Adjusted	Distribution
	Population	Name	Population	Population	Percentage
Kilgore Police Department			11,462	11,462	0.0537%
Lancaster Fire/Police Department			25,894	25,894	0.1214%
Mesquite Police Department			124,523	124,523	0.5839%
Portland Police Department			14,959	14,959	0.0701%
Plano			222,030	222,030	1.0412%
Richardson Police Department			91,802	91,802	0.4305%
Rowlett Police and Fire Comm. Center			44,503	44,503	0.2087%
Sherman Police Department			35,646	35,646	0.1672%
University Park Police Department			23,324	23,324	0.1094%
Wylie			15,502	15,502	0.0727%
Grand Total	**21,325,018**			**21,325,018**	**100.0%**

Data Source: 2001 Census Estimates from the Texas Data Center, Department of Rural Sociology, Texas Agricultural Experiment Station, Texas A&M University. Web Site Address: http://txsdc.tamu.edu.

TRD-200206252
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: September 25, 2002

♦ ♦ ♦

Texas Engineering Extension Service

Notice Per US Department of Justice State Domestic Preparedness Program

Counties and incorporated municipalities of Texas are invited to participate in an assessment of vulnerabilities and needs. Completion of the assessment is a requirement to be considered for equipment funding for response to potential terrorist use of a Weapon of Mass Destruction provided under the US Department of Justice, Office for Domestic Preparedness, Fiscal Year 2001 "State Domestic Preparedness Program".

Every mayor and county judge should have received a letter, dated June 14, 2002, from Dr. G. Kemble Bennett, Director of the Texas Engineering Extension Service (TEEX), asking the mayor or judge to designate a Point of Contact for assessment actions. Instruction materials will be provided to the Point of Contact during the first quarter of Fiscal Year 2003 (September - November).

Jurisdictions that desire to participate, but who have not received an invitation, should contact Charles Todd, TEEX Program Manager, ***not later than October 11, 2002***, to provide the following information for the jurisdiction Point of Contact:

Name of City or County

Name of Point of Contact

Mailing address for Point of Contact

Phone number for Point of Contact

E-mail address for Point of Contact

The information may be provided via e-mail (preferred method), telephonically, or by mail.

E-mail: charley.todd@teexmail.tamu.edu

Telephone: 979-458-6815

Mailing address:

Texas Engineering Extension Service

Attention: Director of Domestic Preparedness

John B. Connally Building

301 Tarrow-TEEX

College Station, Texas 77840-7896

TRD-200206232
Arturo Alonzo, Jr.
Deputy Director
Texas Engineering Extension Service
Filed: September 25, 2002

♦ ♦ ♦

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Exxon Mobil Corporation dba ExxonMobil Refining & Supply Company, Docket No. 2001-1269-AIR-E on September 17, 2002 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eddins-Walcher Company, Docket No. 2002-0009-PST-E on September 17, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915) 655-9479, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Boeing Company, Docket No. 2001-1013-IHW-E on September 17, 2002 assessing $81,900 in administrative penalties with $16,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerald B. Dipple, Jr. dba Remington Tanner Dairy, Docket No. 2001-1303-AGR-E on September 17, 2002 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512) 239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horticultural Printers, Incorporated, Docket No. 2001-1544-AIR-E on September 17, 2002 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Dirt and Paving Enterprises, Inc., Docket No. 2002-0067-AIR-E on September 17, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary Shipp, Enforcement Coordinator at (806) 796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, LP, Docket No. 2001-1479-AIR-E on September 17, 2002 assessing $18,500 in administrative penalties with $3,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Natural Gas Company, Docket No. 2002-0035-AIR-E on September 17, 2002 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Kevin Smith, Enforcement Coordinator at (915) 834-4952, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gracelake Management, LLC, Docket No. 2001-1271-AIR-E on September 17, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2002-0288-AIR-E on September 17, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2002-0287-AIR-E on September 17, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Hampton Refining Co., Docket No. 2001-1547-AIR-E on September 17, 2002 assessing $5,938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Texas Moulding, Inc., Docket No. 2001-1548-AIR-E on September 17, 2002 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandra Alanis, Enforcement Coordinator at (956) 430-6044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wall Colmonoy Corporation, Docket No. 2001-1382-IHW-E on September 17, 2002 assessing $12,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgestone/Firestone, Inc., Docket No. 2001-1412-IWD-E on September 17, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cooper Cameron Corporation, Docket No. 2001-1209-MWD-E on September 17, 2002 assessing $29,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hackberry, Docket No. 2001-0035-MWD-E on September 17, 2002 assessing $14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leonard, Docket No. 2001-0871-MWD-E on September 17, 2002 assessing $18,128 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deercreek Waterworks, Inc., Docket No. 2001-1341-MWD-E on September 17, 2002 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817)588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darin Jeffries, Docket No. 2001-1397-OSI-E on September 17, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Pritchard dba Advanced Septic Systems, Docket No. 2001-1555-OSI-E on September 17, 2002 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benito Valenzuela dba B & M Septic Systems, Docket No. 2001-1144-OSI-E on September 17, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walker Oil, LLC dba Uncle Sam's, Docket No. 2001-1165-PST-E on September 17, 2002 assessing $15,500 in administrative penalties with $15,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (361) 825-3312, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VJ Enterprises, Inc. dba Swing N Stop, Docket No. 2002-0257-PST-E on September 17, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. P. Ventures, Inc. dba Corner Stop, Docket No. 2002-0011-PST-E on September 17, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713) 767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marsh Distributing Company, Docket No. 2001-1352-PST-E on September 17, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gian T. O'Donnell dba Fadco, Docket No. 2001-1443-PST-E on September 17, 2002 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeff Galloway dba Galloway Exxon, Docket No. 2001-1426-PST-E on September 17, 2002 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PNI Transportation Inc., Docket No. 2002-0129-PST-E on September 17, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oldmoc, Inc., Docket No. 2002-0109-PST-E on September 17, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary Shipp, Enforcement Coordinator at (806) 796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oil Patch Petroleum, Inc., Docket No. 2001-1571-PST-E on September 17, 2002 assessing $17,500 in administrative penalties with $3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MZSG Enterprises, Inc. dba NuTime Truck Stop, Docket No. 2001-1066-PST-E on September 17, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Elnora Moses, Enforcement Coordinator at (903) 535-5136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mission Petroleum Carriers, Inc., Docket No. 2002-0039-PST-E on September 17, 2002 assessing $53,000 in administrative penalties with $10,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-5030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tianne Bradley dba Mansell's Grocery and Feed, Docket No. 2002-0108-PST-E on September 17, 2002 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary Shipp, Enforcement Coordinator at (806) 796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tice Grocery, Inc., Docket No. 2001-0532-PST-E on September 17, 2002 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunesara Investment Inc. dba Baytown Market No. 2, Docket No. 2001-1403-PST-E on September 17, 2002 assessing $8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713) 767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bexar Metropolitan Water District Public Facility, Docket No. 2001-0711-PWS-E on September 17, 2002 assessing $16,327 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deanville Water Supply Corporation, Docket No. 2001-1437-PWS-E on September 17, 2002 assessing $438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Jackson, Enforcement Coordinator at (254) 751-0335, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pepi M. Kohler and Mike P. Kohler dba Alpenhof Steak Haus, Docket No. 2000-0864-PWS-E on September 17, 2002 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Therese Newland dba Peek Road Mobile Home Park, Docket No. 2001-1532-PWS-E on September 17, 2002 assessing $375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melvin Ellenwood dba Mt. Pisgah Water System, Docket No. 2001-0867-PWS-E on September 17, 2002 assessing $6,313 in administrative penalties with $5,713 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terra Southwest, Incorporated, Docket No. 2001-1401-PWS-E on September 17, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Augustine, Docket No. 2001-0994-PWS-E on September 17, 2002 assessing $10,238 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yale Minimart, Inc. dba AZ Mart #2, Docket No. 1999-1286-PST-E on September 17, 2002 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diana Grawitch, Staff Attorney at (512) 239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gazi Shahjahan dba Zoom Zooms, Docket No. 2001-1453-PST-E on September 17, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-1105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200206248
LaDonna Castañuela
Chief Clerk
Texas Commisssion on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for Hazardous Waste Permits

For the Period of September 16, 2002

APPLICATION U.S. Department of Energy (D.O.E.)--Pantex Plant, a hazardous waste management facility, has applied to the Texas Commission on Environmental Quality (TCEQ) 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 TCEQ on June 5, 2001.

The TCEQ 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 Carson County Library, 401 Main Street, Panhandle, Texas.

PUBLIC COMMENT/PUBLIC MEETING. The TCEQ held a public meeting at 6:00 p.m. on August 21, 2001 at the Carson County Square House Museum in Panhandle Texas. You may submit additional comments or request another public meeting about this application. Generally, the TCEQ 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, TCEQ, P.O. Box 13087, Austin, Texas 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 requested to be 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 comments 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 TCEQ 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 TCEQ 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 TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. The permittee's compliance history during the life of the permit being modified is available from the Office of Public Assistance.

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.

TRD-200206242
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for Hazardous Waste Permits

For the Period of September 18, 2002

APPLICATION Safety-Kleen Systems, Inc., 3820 Bratton Road, Corpus Christi, Texas 78415, a commercial waste management facility has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal/minor amendment to authorize the continued operation of one spent parts cleaning tank, one dumpster/drum washer (tank) and a container storage are for the storage and processing of hazardous and Class 1, Class 2, and Class 3 non-hazardous industrial solid waste. The minor amendment consists of updated air emissions calculations and the inclusion of four new waste streams that will be proposed by the facility. The facility is located at the above address in Nueces County, Texas. This application was submitted to the TCEQ on August 24, 2001.

The TCEQ 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 TCEQ 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 Central Library, 805 Comanche, Corpus Christi, Texas 78401.

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 TCEQ 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, TCEQ, P.O. Box 13087, Austin, Texas 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 TCEQ 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 TCEQ 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 TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Safety-Kleen Systems, Inc., at the address stated above or by calling Mr. Richardo Saucedo at (210) 648-7066.

TRD-200206244
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for Hazardous Waste Permits

For the Period of September 20, 2002

APPLICATION Safety-Kleen Systems Inc., 1311 E. Tamarack, McAllen, Texas, a commercial hazardous waste management facility, has applied to the Texas Commission on Environmental Commission (TCEQ) for a renewal/minor amendment to authorize the continued operation of three existing tanks and one container storage are for the storage and processing of hazardous, and Class 1, Class 2 and Class 3 industrial solid wastes. The minor amendment authorizes the inclusion of air calculation into the Part B application, add Vacuum Heel Sludge to the list of approved wastestreams, and update emergency information and amend letters to local authorities. The facility is located the above address in Hildago County, Texas. This application was submitted to the TCEQ on August 23, 2001.

The TCEQ 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 McAllen Public Library, 601 Main Street, McAllen, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TCEQ 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, TCEQ, P.O. Box 13087, Austin, Texas 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. The TCEQ may act on this application without providing an opportunity for a contested case hearing if certain criteria are met.

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 TCEQ 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 TCEQ 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 TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Safety-Kleen Systems Inc., at the address stated above or by calling Mr. Ricardo Saucedo at (210) 648-7066 in San Antonio, Texas.

TRD-200206245
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for Industrial Waste Permits

For the Period of September 11, 2002

APPLICATION AND PRELIMINARY DECISION. Safety-Kleen Systems, Inc., 1606 Missle Road, Wichita Falls, Texas 76306, a commercial hazardous waste management facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit renewal to authorize the continued operation of two existing container storage areas and three existing tanks for the storage and processing of hazardous waste. The facility is located at the above address in Wichita County, Texas. This application was submitted to the TCEQ on February 14, 2000.

The TCEQ 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 Wichita Falls Public Library, 600 11th Street, Wichita Falls, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TCEQ 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, TCEQ, P.O. Box 13087, Austin, Texas 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 TCEQ 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 TCEQ 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 TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Safety-Kleen Systems, Inc., at the address stated above or by calling Ms. Karen Dobias at (940) 483-5230 in Denton, Texas.

TRD-200206241
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of September 12, 2002

APPLICATION Waste Management of Texas, Inc., 820 Gessner, Suite 940, Houston, TX 77024, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit to amend the existing permit, MSW-66, Comal County Landfill, to authorize a Type I municipal solid waste landfill facility that will dispose of municipal solid waste, construction-demolition waste, Class 2 & 3 nonhazardous industrial waste and special wastes. The landfill facility covers approximately 96 acres in Comal County, TX, approximately 1.2 miles east of the New Braunfels, TX. This application was submitted to the TNRCC on October 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 to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the New Braunfels Public Library, 700 East Commons Street, New Braunfels, TX 78130.

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 pubic 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 30 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 who requested to be on a 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 comments 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 Mr. Glenn E. Masterson, Director of Project Development, at the address stated above or by calling (713) 647-5457.

TRD-200206249
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of September 20, 2002

APPLICATION. The City of Commerce has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to amend the existing permit (MSW 421) to develop an additional 42.5 acres of the permitted 179.0 acres, in addition to the 43.45 acres that were already

filled and closed prior to October 1993. The facility is located approximately 3.5 miles southeast of the center of the City of Commerce off of Farm to Market Road 1568, in Hunt County, Texas. This application was submitted to the TCEQ on February 6, 2002.

The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The technical summary and draft permit have been revised. The revised draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this revised draft permit. The permit application, executive director's preliminary decision, and revised draft permit are available for viewing and copying at City Hall at 1119 Alamo Street in the City of Commerce, Texas, in Hunt County.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TCEQ permits in the county.

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 comment or to ask questions about the application. The TCEQ 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.

You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 within 30 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 who requested to be on a 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 comments 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 TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from City Hall of the City of Commerce at the address stated above or by calling the City Offices at (903) 886-1124.

TRD-200206246

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Application for Hazardous Waste Permit/Compliance Plan

APPLICATION. GB Biosciences Corporation, located at 2239 Haden Road, on approximately 134.5 acres of land in Houston, Harris County Texas, approximately 0.25 miles southeast of the Interstate Highway 10, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal/major amendment of hazardous waste permit (Permit No. HW- 50205) and renewal of compliance plan (Compliance Plan No. CP-50205). The permit/major amendment would authorize the continued operation of an existing container storage area, closure and post-closure care of the West Surface Impoundment and post-closure care of the Neutralization Ponds. The west surface impoundment will commence closure upon issuance of the renewal permit. The compliance plan renewal authorizes and requires the permittee to continue to monitor the concentration of hazardous constituents in ground water and to remediate ground-water quality to specified standards established by the Corrective Action Program. The compliance plan also establishes an interim stabilization measures (ISMs) program to intercept, stabilize and recover contaminated groundwater that has migrated beyond the influence of the groundwater recovery system authorized by the Corrective Action Program. The ISMs Program will also address two areas of the permitted facility (Regions 1 and 2) that are contaminated from historical production areas. The combination of the Corrective Action and ISMs Programs established by the compliance plan result in a facility-wide cleanup program for the permitted facility.

The Executive Director of the TCEQ has prepared a draft permit and compliance plan which, if approved, would establish the conditions under which the facility must operate. The facility is located in an area subject to the Coastal Management Program (CMP). The Executive Director has reviewed this action for consistency with the goals and policies of the 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.

This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S. 6901 et seq. and 40 CFR 124.10. Once the final permit and compliance plan decisions of the TCEQ and U.S. Environmental Protection Agency (EPA) are effective regarding this facility, they will implement the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The final permit and compliance plan decision will also implement the federally authorized State requirements. The TCEQ and EPA have entered into a joint permitting agreement whereby permits will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 and RCRA, as amended. In order for the applicant to have a fully effective RCRA permit, both the TCEQ and EPA must issue the permit. All permit provisions are fully enforceable under State and Federal law. The State of Texas has not received full HSWA authority. Areas in which the TCEQ has not been authorized by EPA are denoted in the draft permit with an asterisk (*). Persons wishing to comment or request a hearing on a HSWA requirement denoted with an asterisk (*) in the draft permit should also notify in writing, Chief, RCRA Permits Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. EPA will accept hearing requests submitted to the TCEQ.

PUBLIC COMMENT/PUBLIC MEETING. 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 45 days of the date of newspaper publication of the notice. 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 the application or if requested in writing by an affected person within 45 days of the date of newspaper publication of the notice.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 45 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

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;" (4) a brief and specific description of how you would be affected by the granting of the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application 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.

INFORMATION. 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, Texas 78711-3087. For information concerning the hearing process, please contact the Office of Public Interest Counsel, MC 103, the same address as above. Individual members of the general public may contact the Office of Public Assistance, c/o Office of the Chief Clerk, at the address above, or by calling 1-800-687-4040 to: (a) review or obtain copies of available documents (such as draft permit, technical summary, and application); (b) inquire about the information in this notice; or (c) inquire about other agency permit applications or permitting processes. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200206243
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

Notice of Water Quality Applications

The following notices were issued during the period of September 12, 2002 through September 23, 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.

CITY OF ALAMO has applied for a renewal of TCEQ Permit No. 13633-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 14,000 feet south along South Tower Road from the intersection of Tower Road and U.S. 83 Business Highway or approximately 17,000 feet south from the intersection of South Tower Road with U.S. 83 Expressway in Hidalgo County, Texas.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. 12070-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located in the northeast corner of T.S. Grantham M.S. Campus at 13800 Chrisman Road, approximately 1350 feet east of Chrisman Road and approximately 1900 feet north of the intersection of Aldine Mail Road and Chrisman Road in Harris County, Texas.

AQUASOURCE DEVELOPMENT COMPANY has applied for a renewal of TPDES Permit No. 14106-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1.3 miles southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960, and at the northeast corner of the intersection of Imperial Valley Drive and North Vista in Harris County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 12563-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1.3 miles west of the intersection of Farm-to-Market Road 729 and Farm-to-Market Road 1969 and approximately 4 miles southwest of the intersection of State Highway 49 and Farm-to-Market Road 1969 in Marion County, Texas.

CITY OF ATHENS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10143-003, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,367,000 gallons per day. Authorization to discharge was previously permitted by expired Permit No. 10143-002. The facility is located south of Walnut Creek and approximately 4 miles southwest of the intersection of Prairieville and Corsicana Streets in the City of Athens in Henderson County, Texas.

CITY OF BIG LAKE has applied for a renewal of TPDES Permit No. 10038-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located south of and adjacent to U.S. Highway 67, approximately 1.5 miles east of the intersection of U.S. Highway 67 and State Highway 137 in Reagan County, Texas.

CITY OF BLANCO has applied for a renewal of TPDES Permit No. 10549-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 0.8 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1623 in Blanco County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. 12332-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 2,000,000 gallons per day to an annual average flow not to exceed 2,400,000 gallons per day. The facility is located approximately 500 feet north of Marys Creek, approximately 4,800 feet west of Farm-to-Market Road 1128 and approximately 1.2 miles south of Farm-to-Market Road 518 in Brazoria County, Texas.

CITY OF BUFFALO has applied for a renewal of TPDES Permit No. 10022-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 322,000 gallons per day. The facility is located adjacent to and east of Marion Boulevard, approximately 3/4 mile north-northeast of the intersecton of U.S. Highways 75 and 79 in Leon County, Texas.

CANEY CREEK UTILITIES, INC. has applied for a renewal of TPDES Permit No. 12023-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on Hunters Point Road on the west bank of Lake Conroe approximately 3/4 mile north of Farm-to-Market Road 1097 in Montgomery County, Texas.

CHEVRON PHILLIPS CHEMICAL COMPANY LP located approximately two miles northeast of the city of Borger on State Highway 119, which operates the Philtex/Ryton Complex, a chemical manufacturing plant, has applied for a renewal of TPDES Permit No. 02484, which authorizes the discharge of stormwater runoff at a variable rate depending on rainfall via Outfall 001 and 002.

CLINT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13441-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via subsurface disposal by means of rapid infiltration in six infiltration beds. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3.5 miles east-southeast of the intersection of U.S. Highway 62/180 and Farm-to-Market Road 659 (Zaragosa Road) on the campus of Clint High School in El Paso County, Texas.

CITY OF CORPUS CHRISTI has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. 10401-009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located at the west end of Whitecap Boulevard on Padre Island in the City of Corpus Christi in Nueces County, Texas.

CITY OF CROCKETT has applied for a renewal of TPDES Permit No. 10154-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 3,000 feet south of the intersection of U.S. Highway 287 and State Highway Loop 304 in Southeast Crockett in Houston County, Texas.

CYPRESS HILL MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. 12327-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 690,000 gallons per day. The facility is located 400 feet west of Cypress Rose Hill Road and 3/4 mile north of the intersection of Cypress Rose Hill Road with U.S. Highway 290 in Harris County, Texas.

GRIMES COUNTY MUNICIPAL UTILITY DISTRICT 1 has applied for a renewal of TPDES Permit No. 11437-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 2.5 miles west of the intersection of Farm-to-Market Road 2445 and Farm-to-Market Road 1774, 0.2 mile north of Farm-to-Market Road 2445, 11 miles east-northeast of the City of Navasota in Grimes County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 196 has applied for a major amendment to TPDES Permit No. 12447-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 500,000 gallons per day to an annual average flow not to exceed 1,400,000 gallons per day. The facility is located approximately 1.7 miles south of the intersection of U.S. Highway 290 and Barker-Cypress Road, at a point approximately 3,000 feet east of Barker-Cypress Road in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT--FONDREN ROAD has applied a renewal of TPDES Permit No. 10570-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the south side of Hampton Road, approximately 0.5 mile west of the intersection of Fondren Road and Main Street (U.S. 90A) in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 92 has applied for a renewal of TCEQ Permit No. 10908-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located at the northeast end of Bell Chase Lane, approximately 2 miles east of the City of Spring in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TCEQ Permit No. 10495-133, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 400 feet south of the intersection of Gears Road and Spears Road on the south side of Greens Bayou in Harris County, Texas.

CITY OF HUNTINGTON has applied for a renewal of TCEQ Permit No. 10191-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The plant site is located approximately 1 mile southeast of the intersection of U.S. Highway 69 and Farm-to-Market Road 1669 between the southern Pacific Railroad and Shawnee Creek in Angelina County, Texas.

HYDRIL COMPANY has applied for a renewal of TCEQ Permit No. 11794-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on the south side of North Belt Drive approximately 0.5 mile west of the intersection of North Belt Drive and John F. Kennedy Boulevard, and 2.7 miles west of U.S. Highway 59 in Harris County, Texas.

KAUFMAN COUNTY DEVELOPMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 13910-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The permittee request a decrease in the discharge of treated domestic wastewater from a daily average flow not to exceed 700,000 gallons per day to a daily average flow not to exceed 210,000 gallons per day. The facility will be located approximately 500 feet east of Windmill Farms Boulevard; 200 feet southeast of intersection of Windmill Farms Boulevard and Concord Drive and 1,500 feet northwest of U.S. Highway 80 in Kaufman County, Texas.

CITY OF KOUNTZE has applied for a renewal of TPDES Permit No. 10203-003 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 5,000 feet east-northeast of the intersection of U.S. Highway 69 and State Highway 326 and approximately 0.25 mile southeast of the intersection of Old Highway 418 and the Gulf Colorado and Santa Fe Railroad in Hardin County, Texas.

LINGO PROPERTIES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14322-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The

facility is located approximately 4,000 feet south of the intersection of County Road 59 and State Route 288 in Brazoria County, Texas.

LOUISIANA-PACIFIC CORPORATION which operates the Bon Weir Plywood Mill, which manufactures plywood, chips, dimensional lumber, and pine bark, has applied for a major amendment to TPDES Permit No. 01789 to authorize the use of artesian well water and potable water as source waters; add the discharge of fire system flush water and miscellaneous wastewaters (vat water, press pit water, drier wash water, and boiler blowdown) via Outfall 001; delete mass effluent limitations and replace the chemical oxygen demand effluent limitation with 5-day biochemical oxygen demand effluent limitation via Outfall 001; reduce the monitoring frequency for oil and grease via Outfall 001; remove the authorization to discharge sewage effluent via Outfalls 101 and 001; and delete internal Outfall 101. The current permit authorizes the discharge of storm water runoff, wet decking water, equipment washdown water (including conveyer lube water), boiler blowdown, cooling tower blowdown, filter backwash, air compressor condensate, and treated sewage effluent (previously monitored via Outfall 101) on a flow variable basis via Outfall 001; the discharge of sewage effluent at a daily average flow not to exceed 72,000 gallons per day via Outfall 101; and the disposal of wastewaters via evaporation and irrigation of 10 acres. The facility site and irrigation area are located on the south side of Farm-to-Market Road 363, approximately 1.3 miles south of the intersection of Farm-to-Market Road 363 with Farm-to-Market Road 2626, and approximately five miles west-southwest of the town of Bon Weir, Newton County, Texas.

CITY OF MIDWAY has applied for a renewal of TPDES Permit No. 13378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas.

PILGRIMS PRIDE CORPORATION has applied for a major amendment to TCEQ Permit No. 03017 to authorize an increase in the discharge at Outfall 001 from a daily average flow not to exceed 3,000,000 gallons per day to a daily average flow not to exceed 3,750,000 gallons per day; and the removal of effluent limitations and monitoring requirements for oil and grease at Outfall 001. The current permit authorizes the discharge of treated process wastewater and domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0062936 issued on July 22, 1993 and TCEQ Permit No. 03017, issued on May 7, 1991. The applicant operates a poultry processing and rendering plant. The plant site is located on the north side of Farm to Market Road 127, approximately 500 feet east of Tankersley Creek, southwest of the City of Mount Pleasant, Titus County, Texas.

REED PARQUE LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. 13968-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1,500 feet northeast of the intersection of U.S. Highway 288 and Reed Road in Harris County, Texas

RENN ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 12078-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. This application was submitted to the TCEQ on April 23, 2002. The facility is located at 9535 Sugarland-Howell Road, immediately northeast of the crossing of Sugarland-Howell Road over Keegans Bayou in Harris County, Texas.

TECON WATER COMPANY, L.P. has applied for a renewal of TPDES Permit No. 14179-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located east and adjacent to U.S. Highway 190 in the Blue Water Cove Subdivision and approximately 6,500 feet northeast of the intersection of U.S. Highway 190 and State Highway 980 in San Jacinto County, Texas.

TEXAS INSTRUMENTS INCORPORATED which operates the Stafford Facility, an electronic components manufacturing plant, has applied for a major amendment to TCEQ Permit No. 01225 to authorize an increase in the discharge of process wastewater, pretreated BUMP Cu Resin wastewater, non-process wastewater from site buildings, support wastewater, cooling tower blowdown, and deionization regenerate from a daily average flow not to exceed 1,500,000 gallons per day to a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001; and to establish Outfalls 005, 006, and 007 for the intermittent and flow variable discharge of storm water. The current permit authorizes the discharge of combined treated industrial and domestic wastewaters and recovered/treated groundwater at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001; discharge of reverse osmosis wastewater at a daily average flow not to exceed 450,000 gallons per day via Outfall 002; and storm water on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located at 12201 Southwest Freeway, approximately one mile north of the intersection of U.S. Highway 59 and U.S. Highway 90 in the City of Stafford, Fort Bend County, Texas.

TEXAS MARUTI HOSPITALITY COMPANY INC. has applied for a renewal of TPDES Permit No. 11678-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at the westerly dead end of Gillespie Street, approximately 0.3 mile west of Interstate Highway 45 and 0.9 mile south of Beltway 8 in Harris County, Texas.

TEXAS UNITED PIPE, INC. which operates a polyvinyl chloride (PVC) extrusion facility manufacturing 0.5 to 8 inch diameter pipe, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04443, to authorize the discharge of chill water on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 11627 North Houston Rosslyn Road, approximately 2.5 miles southeast of the intersection of Beltway 8 and State Highway 249, Harris County, Texas.

TIFCO INDUSTRIES, INC. has applied for a renewal of TCEQ Permit No. 12465-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located approximately 3,000 feet northwest of the intersection of U.S. Highway 290 and Huffmeister Road in Harris County, Texas.

CITY OF TOMBALL has applied for a major amendment to TPDES Permit No. 10616-001 to remove effluent limitations for total copper. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 615 East Huffsmith Road, which is approximately 1,400 feet due north of the intersection of Neal Street and East Huffsmith Road in the City of Tomball in Harris County, Texas.

UNITED STRUCTURES OF AMERICA, INC. has applied for a renewal of TPDES Permit No. 12765-001, 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 at 1912 Buschong in the City of Houston in Harris County, Texas.

CITY OF WICHITA FALLS which operates a Municipal Water Treatment Plant, has applied for a new permit, proposed Texas Pollutant

Discharge Elimination System (TPDES) Permit No. 04419, to authorize the discharge of ultra-filtration and reverse osmosis reject water at a daily average flow not to exceed 6,000,000 gallons per day via Outfall 001. The facility is located on the north side of Johnson Road between Barnett Road and Fairway Road, approximately 2100 feet southeast of the intersection of U.S. Highway 82 (Kell Freeway) with Barnett Road, Wichita County, Texas.

TRD-200206247
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 25, 2002

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 **November 11, 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 November 11, 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: BASF Fina Petrochemicals Limited Partnership; DOCKET NUMBER: 2002- 0808-AIR-E; IDENTIFIER: Air Account Number JE-0843-F and Air Permit Number 36644/PSD-TX- 903; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant RULE VIOLATED: 30 TAC §101.20(3), §116.115(b)(2)(G) and (c), Air Permit Number 36644/PSD-TX-903, and THSC, §382.085(b), by failing to maintain the oxides of nitrogen (NOx) emissions below the permitted limit of 13.65 and 26.96 pounds per hour; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Arthur Bayer dba Bayer Water System, Inc.; DOCKET NUMBER: 2002-0782- PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1010212; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(b)(1) and (c)(5), by failing to submit a sample site selection form and conduct lead and copper monitoring; PENALTY: $400; ENFORCEMENT COORDINATOR: John Mead, (512) 239- 6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Brothers Materials, Ltd.; DOCKET NUMBER: 2002-0659-AIR-E; IDENTIFIER: Air Account Number 95-0261-O; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: rock crushing and screening plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a new source review permit, satisfy the conditions for a standard permit, flexible permit, or permit by rule, or satisfy the criteria for a de minimis facility prior to beginning work on or constructing a new rock crusher facility; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: CR/PL, L.L.C.; DOCKET NUMBER: 2002-0579-IHW-E; IDENTIFIER: TNRCC Unauthorized Site Number F0830; LOCATION: near Friendswood, Robertson County, Texas; TYPE OF FACILITY: plumbing fixture manufacturing; RULE VIOLATED: 30 TAC §335.62 and §335.503, and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations on bag house waste, miscellaneous production/plant waste, spray booth filters, ground glass from the firing process, and off-specification fixtures; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Delia Luke dba Chaparral RV Park; DOCKET NUMBER: 2002-0369-PWS-E; IDENTIFIER: PWS Number 0270084; LOCATION: Burnet, Burnet County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(f)(3)(A), (n)(2), and (v), by failing to maintain records of the volume of water treated daily, provide an accurate and up-to-date map of the distribution system, and install electrical wiring in conduit; 30 TAC §290.43(c)(1), (2), and (3), and (e), by failing to provide the ground storage tank with a roof vent, a lockable cover, an overflow pipe, and enclose the ground storage tank with a properly constructed intruder-resistant fence; 30 TAC §290.42(b)(1) and (e)(2), by failing to have disinfection equipment; 30 TAC §290.45(b)(1)(C)(iii) and (c)(1)(B)(iv), by failing to provide two or more service pumps with a capacity of one gallon per minute (gpm) and provide a pressure tank capacity of 10 gallons per unit; 30 TAC §290.41(c)(3)(K), (M), and (N), by failing to seal the well casing with gaskets or a pliable crack-resistant sealing compound, provide a suitable sampling tap on the discharge pipe, and provide a flow measuring device on the well; and 30 TAC §290.39(h)(1) and THSC, §341.035(a), by failing to receive written approval before beginning construction on a public water system; PENALTY: $3,400; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Clarke Products, Inc.; DOCKET NUMBER: 2002-0763-AIR-E; IDENTIFIER: Air Account Number TA-0671-M; LOCATION: Grand Prairie, Tarrant County, Texas; TYPE OF FACILITY: acrylic bathtub manufacturing; RULE VIOLATED: 30 TAC §122.145(2), §122.146(1) and (2), and THSC, §382.085(b), by failing to submit the annual Title V compliance certification and its corresponding deviation report; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-1105; REGIONAL

OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Cloud Construction Company, Inc.; DOCKET NUMBER: 2002-0617-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 18122; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: fleet fueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; 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 an underground storage tank (UST) registration and self-certification form and obtain a delivery certificate; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Conoco, Inc.; DOCKET NUMBER: 2002-0767-AIR-E; IDENTIFIER: Air Account Number IA-0001-R; LOCATION: Mertzon, Irion County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §101.20(1), 40 CFR §60.8, and THSC, §382.085(b), by failing to conduct the required performance tests; 30 TAC §111.111(a)(4)(A) and THSC, §382.085(b), by failing to comply with visible emissions limits for process flares; 30 TAC §122.145(2) and THSC, §382.085(b), by failing to report the deviations for visible emissions from the flare; and 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to obtain a permit for the flare prior to construction; PENALTY: $33,260; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: Von's Establishment Inc. dba Dazzy's Mini Market; DOCKET NUMBER: 2002-0368-PST-E; IDENTIFIER: PST Facility Identification Number 0045149; LOCATION: Crowley, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to ensure that the Stage II records are on-site and ready for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform annual pressure decay testing; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475, by failing to test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and (ii)(I), and (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475, by failing to ensure that all tanks are monitored for releases, test the line leak detector, provide proper release detection for the pressurized piping, conduct reconciliation of detailed inventory control records, and conduct and record inventory volume measurements; and 30 TAC §334.48(c), by failing to conduct inventory control at a retail facility; PENALTY: $600; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Fleet Star Service Center Inc.; DOCKET NUMBER: 2002-0403-AIR-E; IDENTIFIER: Air Account Number DB-5255-A; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: autobody refinishing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to limit the air contaminants; and 30 TAC §106.4(8)(c) and THSC, §382.085(b), by failing to maintain all emissions control equipment; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Hidde Osinga dba Hidde Osinga Dairy; DOCKET NUMBER: 2001-1093- AGR-E; IDENTIFIER: Water Quality Permit Number 04125-000; LOCATION: Proctor, Comanche County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §§305.125(1), 321.31(a), 321.39(f)(19)(A), and 321.42(a), Water Quality Permit Number 04125-000, and the Code, §26.121, by failing to prevent the unauthorized discharge of wastewater and provide notification that an unauthorized discharge had occurred; and 30 TAC §220.21 and §305.503, and the Code, §26.0291(b) and §26.0315(h), by failing to pay wastewater treatment inspection and water quality assessment fees; PENALTY: $600; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602- 7833, (915) 698-9674.

(12) COMPANY: Hydro-Walk Energy, Inc.; DOCKET NUMBER: 2002-0601-PST-E; IDENTIFIER: Enforcement Identification Number 17927; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $8,000; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Nizar Makani dba King Food Mart; DOCKET NUMBER: 2002-0187-PST-E; IDENTIFIER: PST Facility Identification Number 27149; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1) and (3), and THSC, §382.085(b), by failing to maintain a copy of the California Air Resources Board Executive Order and maintain a record of maintenance conducted; 30 TAC §115.244(1) and (3), and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II Vapor recovery system (VRS) and conduct monthly inspections; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the annual pressure decay test on the Stage II VRS; 30 TAC §334.7(d)(3), by failing to amend the UST registration; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: City of Ladonia; DOCKET NUMBER: 2002-0577-PWS-E; IDENTIFIER: PWS Identification Number 0740004; LOCATION: Ladonia, Fannin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f), by failing to maintain operation records; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a total well capacity of 0.6 gpm per connection; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; and 30 TAC §290.46(e)(1)(B) and THSC, §341.033(a), by failing to employ a certified operator with a class C or higher certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Minyard Food Stores, Inc.; DOCKET NUMBER: 2002-0707-PST-E; IDENTIFIER: PST Facility Identification Number 0041630; LOCATION: Coppell, Dallas County, Texas; TYPE OF FACILITY: fleet refueling; 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 ensure that the UST registration and self-certification form is fully and accurately completed and obtain and make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.50(b)(1)(A)

and the Code, §26.3475, by failing to ensure that each tank is monitored for releases; PENALTY: $8,400; ENFORCEMENT; COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(16) COMPANY: National Rail Car Inc.; DOCKET NUMBER: 2002-0386-AIR-E; IDENTIFIER: Air Account Number ND-0035-K; LOCATION: Roscoe, Nolan County, Texas; TYPE OF FACILITY: railcar cleaning; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent the discharge of one or more air contaminants; 30 TAC §101.6(b) and THSC, §382.085(b), by failing to create a final record of reportable and nonreportable upsets; 30 TAC §111.111(a)(4)(A) and §116.115(b)(2)(G) and (c), Special Condition of Air Permit Number 21534, and THSC, §382.085(b), by failing to prevent visible emissions from the flare and meet the volatile organic compounds (VOC) emissions limit; PENALTY: $5,000; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: Pebble Creek Joint Venture; DOCKET NUMBER: 2002-0702-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program File Numbers 01121401 and 01121402; LOCATION: Austin, Williamson County, Texas; TYPE OF FACILITY: real property; RULE VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of an Edwards Aquifer water pollution abatement plan and sewage collection system plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: Site Concrete, Incorporated; DOCKET NUMBER: 2002-0787-AIR-E; IDENTIFIER: Air Account Number 92-2218-L; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: portable air curtain trench burner; RULE VIOLATED: 30 TAC §106.496(4), (5), and (6), and THSC, §382.085(b), by failing to maintain an on-site record of the hours of operation of the air curtain trench burner (ATCB), adding too much material to the trench such that the material would not be consumed, and failing to maintain the blower until all material in the trench was consumed; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to control particulate emissions from the ACTB; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Sitton Oil and Marine Company, Inc.; DOCKET NUMBER: 2002-0917-PST- E; IDENTIFIER: Enforcement Identification Number 18264; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Southern Livestock, Inc.; DOCKET NUMBER: 2002-0900-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03970-000 and Environmental Protection Agency Identification Number TX0130338; LOCATION: Gonzales, Gonzales County, Texas; TYPE OF FACILITY: beef cattle feedlot; RULE VIOLATED: TPDES Permit Number 03970-000 and the Code, §26.121(a)(1), by failing to implement best management practices to prevent a discharge of contaminated wastewater; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Edward Moderow, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Vernon Varnado dba Southern Manufacturing Company; DOCKET NUMBER: 2002-1044-AIR-E; IDENTIFIER: Air Account Number JE-0168-B and Air Permit Number O-01058; LOCATION: Groves, Jefferson County, Texas; TYPE OF FACILITY: fiberglass manufacturing; RULE VIOLATED: Air Permit Number O-01058, 30 TAC §122.143(4) and §122.146(1) and (2), and THSC, §382.085(b), by failing to certify compliance for at least a 12-month period and submit the certification within 30 days of the certification period; PENALTY: $1,500; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Abdel Abunijmeh dba Star 1; DOCKET NUMBER: 2002-0504-PST-E; IDENTIFIER: PST Facility Identification Number 0008948; LOCATION: Godley, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and the Code, §26.346(a), by failing to renew a previously issued delivery certificate; 30 TAC §334.7(a)(1), by failing to register a UST; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to ensure that all USTs are monitored for releases; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2002-0689-IHW-E; IDENTIFIER: Solid Waste Registration No. 30106; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii) and §265.193(b) and (f); by failing to provide secondary containment for ancillary piping; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Maria Isabel Solis formerly dba The Goldmine; DOCKET NUMBER: 2002- 0102-PST-E; IDENTIFIER: PST Facility Identification Number 47006; LOCATION: Roma, Starr County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to file with the agency a notice of any change or additional information; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all UST records; 30 TAC §334.50(b)(1)(A) and (2)(A) and the Code, §26.3475(a) and (c)(1), by failing to monitor the UST system for releases; 30 TAC §334.49 and the Code, §26.3475(d), by failing to adequately protect the UST system from corrosion; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; and 30 TAC §334.54(b), by failing to comply with the requirements for UST systems; PENALTY: $600; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: United Brothers Corporation dba Super Lucky Lady Fina; DOCKET NUMBER: 2002-0489-PST-E; IDENTIFIER: PST Facility Identification Number 0051519; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to ensure that all USTs are monitored for releases; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is accurately completed; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Valero Refining Company-Texas; DOCKET NUMBER: 2001-0852-AIR-E; IDENTIFIER: Air Account Number HG-0130-C; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and §116.115(c), Air Permit Number 2501A, and THSC, §382.085(b), by failing to limit visible emissions to 20%; 30 TAC §101.6(a)(1)(B) and THSC, §382.085(b), by failing to submit a notification for a reportable opacity test; 30 TAC §115.112(a)(2)(D) and THSC, §382.085(b), by failing to equip an external floating roof tank roof drain with a slotted membrane fabric; 30 TAC §101.20(1) and §115.352(2), 40 CFR §60, Subpart VV, §60.482-7(d)(2), and THSC, §382.085(b), by failing to make a first attempt at repair within five calendar days of discovery of leaks; 30 TAC §113.130 and §115.354(2)(C), 40 CFR §63, Subpart H, 63.168(b)(1) and (c) and 63.180(b), and THSC, §382.085(b), by failing to monitor valves and light liquid service; 30 TAC §115.356(1)(D) and THSC, §382.085(b), by failing to record and maintain monitoring dates of components; Air Permit Number 2501A, 30 TAC §116.115(c), and THSC, §382.085(b), by failing to maintain a continuous emissions monitoring system; and Air Permit Number 2507A, 30 TAC §116.115(c), and THSC, §382.085(b), by failing to comply with the permitted limit established in the maximum allowable emission rate table; PENALTY: $99,808; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Wallace Integrated Graphics, Incorporated; DOCKET NUMBER: 2001-0713- AIR-E; IDENTIFIER: Air Account Number TH-0732-J; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: printing company; RULE VIOLATED: 30 TAC §101.10 and THSC, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $720; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200206216
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 24, 2002

♦ ♦ ♦

Texas Department of Health

Correction of Error

The Texas Department of Health proposed amendments to §§38.2 - 38.4, 38.10, 38.12, 38.13, 38.15 and proposed new §38.16, concerning the Children with Special Health Care Needs Services Program (CSHCN). The rules appeared in the September 20, 2002, *Texas Register* (27 TexReg 8873).

In the preamble on page 8874 the text incorrectly reads that comments will be accepted for "60 days and 30 days". Another sentence reads, "Comments will be accepted for 30 days following publication of the proposed amendments and new section..." These are both errors. The correct comment period is 60 days, and the paragraph should read as follows.

"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."

TRD-200206254
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 25, 2002

♦ ♦ ♦

Notice of Emergency Cease and Desist Order on Friendswood Doctors of Chiropractic

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Friendswood Doctors of Chiropractic (registrant-R24290) of Friendswood to cease and desist performing Lumbo-Sacral Spine (AP) x-ray procedures with the Fischer x-ray unit (Model Number 425HF; Serial Number 1-09-95-024). The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206215
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 24, 2002

♦ ♦ ♦

Notice of Emergency Cease and Desist Order on Stafford Chiropractic Clinic

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Stafford Chiropractic Clinic (registrant-R00190) of Stafford to cease and desist performing Cervical Spine (AP) x-ray procedures with the Universal x-ray unit (Model Number 3398-C; Serial Number AC1484). The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206214
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 24, 2002

♦ ♦ ♦

Notice of Public Hearing on Proposed Immunization Registry (ImmTrac) Rules

The Texas Department of Health (department) will hold a public hearing to accept public comments on proposed rules in 25 Texas Administrative Code, Chapter 100, concerning the Texas Health Department Immunization Registry. These rules were published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8886).

The hearing will begin at 2:00 PM on November 1, 2002, in the Main Building, Room K-100 (Auditorium), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The hearing will continue until all comments are heard.

Further information may be obtained from Janie Garcia of the department's Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7284, Extension 6430, or (800) 252-9152, or electronic mail at Janie.Garcia@tdh.state.tx.us.

TRD-200206237
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 25, 2002

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Cody B. Doyle, D.C., North Richland Hills, R23476, September 19, 2002; Team Chiropractic, P.C., Watauga, R24279, September 19, 2002; Aviation Inspection Services, Fort Worth, R19083, September 19, 2002; Mechanical & Materials Engineering, Austin, R24291, September 19, 2002; Henley Healthcare, Inc., Sugar Land, Z00907, September 19, 2002; Valley Cosmetic Laser Center, Edinburg, Z01418, September 19, 2002.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206236
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 25, 2002

Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following radioactive material licenses: Luzenac America, Incorporated, Houston, G02085, September 19, 2002; Medical Service Laboratories, Houston, G02136, September 19, 2002; Quantum MRI West Loop and Diagnostic Center, Houston, L04598, September 19, 2002.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206235
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 25, 2002

Texas Health and Human Services Commission

Correction of Error

Due to a staff error, some rule source notes in Title 1, Part 15, Chapter 355 of the *Texas Administrative Code* incorrectly cite a transfer date of January 1, 1997. The correct date of transfer is September 1, 1997.

The source notes for 1 TAC §§355.781, 355.783, 355.8001, 355.8021, 355.8041, 355.8061, 355.8063, 355.8065, 355.8067, 355.8081, 355.8083, 355.8085, 355.8087, 355.8089, 355.8101, 355.8121, 355.8141, 355.8161, 355.8181, 355.8201, 355.8221, 355.8241, 355.8261, 355.8281, 355.8301, 355.8321, 355.8341, 355.8361, 355.8381, 355.8401, 355.8421-355.8426, 355.8441, 355.8461, 355.8481, 355.8521, 355.8541-355.8551, 355.8561, 355.8581-355.8584, 355.9001-355.9010, 355.9012-355.9014, 355.9021, 355.9022, and 355.9041 should read "effective September 1, 1997, as published in the Texas Register December 11, 1998, 23 TexReg 12660." The *Texas Administrative Code* will be revised to include the corrected transfer date.

TRD-200206240

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by EASTERN ALLIANCE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Lancaster, Pennsylvania.

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-200206250
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 25, 2002

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages for all classes by territory: +108 to +184 for Bodily Injury, +32 to +80 for Property Damage, +32 to +43 for Medical Payments, +113 to +187 for Personal Injury Protection, +101 to +169 for Comprehensive, +93 to +154 for Collision; and for all classes and territories +80 for Uninsured Motorists Bodily Injury/Property Damage. The overall rate change is +13%.

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 21, 2002.

TRD-200206217
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 24, 2002

Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2534 on October 17, 2002 at 1:30 p.m. in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (Association) filing of proposed adjustments to the limits of liability for the Association's policies of windstorm and hail insurance.

This notice is made pursuant to the Texas Insurance Code, Art. 21.49 §8D (g) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's proposed adjustments to the limits of liability for its policies of windstorm and hail insurance. This proceeding is exempt from the contested case procedures in Sections 40.002 and 40.003 of the Texas Insurance Code. For additional information interested parties may contact Philip Presley, Chief Actuary for Property and Casualty Insurance Lines, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701 or call at (512) 475-3017.

TRD-200206220
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 24, 2002

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Mede America Corporation of Ohio, a foreign third party administrator. The home office is Twinsburg, Ohio.

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-200206251
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 25, 2002

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 320 "Cash Bounty"

1.0. Name and Style of Game.

A. The name of Instant Game Number 320 is "CASH BOUNTY". The play style is "key symbol match with auto win".

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 320 shall be $1.00 per ticket.

1.2. Definitions in Instant Game Number 320.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: TEX SYMBOL, JAKE SYMBOL, JOE SYMBOL, COLONEL SYMBOL, BART SYMBOL, CAL SYMBOL, ROY SYMBOL, KID SYMBOL, BILLY SYMBOL, STAR SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $100, $500, and $1,000.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 320 - 1.2D

PLAY SYMBOL	CAPTION
TEX SYMBOL	TEX
JAKE SYMBOL	JAKE
JOE SYMBOL	JOE
COLONEL SYMBOL	COLONEL
BART SYMBOL	BART
CAL SYMBOL	CAL
ROY SYMBOL	ROY
KID SYMBOL	KID
BILLY SYMBOL	BILLY
STAR SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 320 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, $500.

I. High-Tier Prize--A prize of $1,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (320), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 320-0000001-000.

L. Pack--A pack of "CASH BOUNTY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "CASH BOUNTY" Instant Game Number 320 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH BOUNTY" Instant Game is determined once the latex on the ticket is scratched off to expose nine play symbols. If the player matches the WANTED GUY to any of the BAD GUYS, the player will win the CASH BOUNTY shown. If the player finds a star symbol, the player will win that prize automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Bad Guy symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. The autowin symbol will appear according to the prize structure and will appear only once on a ticket.

2.3. Procedure for Claiming Prizes.

A. To claim a "CASH BOUNTY" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH BOUNTY" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a

prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH BOUNTY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH BOUNTY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH BOUNTY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 11,809,250 tickets in the Instant Game Number 320. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 320 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,322,656	8.93
$2.00	519,503	22.73
$3.00	330,610	35.72
$5.00	188,968	62.49
$10.00	70,898	166.57
$20.00	23,609	500.20
$50.00	23,661	499.10
$100	2,735	4,317.82
$500	100	118,092.50
$1,000	100	118,092.50

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 320 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 320, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200206222
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2002

Instant Game Number 325 "Instant Cash"

1.0. Name and Style of Game.

A. The name of Instant Game Number 325 is "INSTANT CASH". The play style in Game 1 is "key symbol match with auto win". The play style in Game 2 is "match 3". The play style in Game 3 is "row, column, diagonal". The play style in Game 4 is "key number match".

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 325 shall be $5.00 per ticket.

1.2. Definitions in Instant Game Number 325.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000, X, [ ], DIAMOND SYMBOL, MONEY BAG SYMBOL, POT OF GOLD SYMBOL, DOLLAR SIGN SYMBOL, CHIP SYMBOL, STACK OF COINS SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 325 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
X	
[ ]	
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
DIAMOND SYMBOL	DIMD
MONEY BAG SYMBOL	$BAG
POT OF GOLD SYMBOL	GOLD
DOLLAR SIGN SYMBOL	MONY
CHIP SYMBOL	CHIP
STACK OF COINS SYMBOL	STAK
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
GOLD BAR SYMBOL	GOLD
STACK OF BILLS SYMBOL	BILLS

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 325 - 1.2E

CODE	PRIZE
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, $500.

I. High-Tier Prize--A prize of $1,000, $5,000 or $50,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (325), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 325-0000001-000.

L. Pack--A pack of "INSTANT CASH" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "INSTANT CASH" Instant Game Number 325 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 47 play symbols. In Game 1, if the player matches both symbols in a game, the player will win $50 automatically. In Game 2, if the player gets 3 like amounts, the player will win that amount. In Game 3, if the player gets 3 X's in the same row, column or diagonal, the player will win the prize under the prize area. In Game 4, if the player matches any of the YOUR NUMBERS to either LUCKY NUMBER, the player will win the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 47 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 47 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 47 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 47 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate non-winning games in any order.

C. Game 1: No duplicate non-winning play symbols.

D. Game 2: No four or more of a kind.

E. Game 2: No three or more pairs on a ticket.

F. Game 2: This game can win only once.

G. Game 3: All games will contain either 5 X's and 4 [ ]'s or 4 X's and 5 [ ]'s.

H. Game 3: This game can win only once.

I. Game 4: No duplicate Lucky Numbers on a ticket.

J. Game 4: No duplicate non-winning prize symbols.

K. Game 4: No duplicate non-winning Your Number play symbols.

L. Game 4: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3. Procedure for Claiming Prizes.

A. To claim a "INSTANT CASH" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "INSTANT CASH" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "INSTANT CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "INSTANT CASH" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 6,108,075 tickets in the Instant Game Number 325. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 325 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	732,952	8.33
$8	570,087	10.71
$10	407,225	15.00
$20	142,516	42.86
$50	56,350	108.40
$100	6,620	922.67
$500	1,263	4,836.16
$1,000	240	25,450.31
$5,000	28	218,145.54
$50,000	4	1,527,018.75

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.19. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 325 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 325, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200206223
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2002

Instant Game Number 328 "Super Lucky 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 328 is "SUPER LUCKY 7'S". The play style in the Bonus Spot is "key symbol". The play style in Game 1 is "row, column, diagonal". The play style in Game 2 is "key symbol with doubler". The play style in Game 3 is "key symbol match with doubler". The play style in Game 4 is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 328 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 328.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: X, BOXED 1, BOXED 2, BOXED 3, BOXED 4, BOXED 5, BOXED 6, BOXED 7, BOXED 8, BOXED 9, BOXED 10, BOXED 11, BOXED 12, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $3.00, $4.00, $5.00, $7.00, $10.00, $20.00, $21.00, $25.00,

$50.00, $100, $7,000, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, BEEF SYMBOL, STEER SYMBOL, BRANDING IRON SYMBOL, FIRE SYMBOL, SUN SYMBOL, SEVEN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 328 - 1.2D

PLAY SYMBOL	CAPTION
X	
7	
BOXED 1	ONE
BOXED 2	TWO
BOXED 3	THR
BOXED 4	FOR
BOXED 5	FIV
BOXED 6	SIX
BOXED 7	SVN
BOXED 8	EGT
BOXED 9	NIN
BOXED 10	TEN
BOXED 11	ELV
BOXED 12	TLV
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$20.00	TWENTY
$21.00	TWY ONE
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$7,000	SVN THOU
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
BEEF SYMBOL	BEEF
STEER SYMBOL	STEER
BRANDING IRON SYMBOL	BRAND
FIRE SYMBOL	FIRE
SUN SYMBOL	SUN
7 SYMBOL	SVN

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 328 - 1.2E

CODE	PRIZE
SVN	$7.00
TEN	$10.00
FRN	$14.00
TWE	$21.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $10.00, $14.00, $21.00.

H. Mid-Tier Prize - A prize of $28.00, $77.00, $177, $777.

I. High-Tier Prize - A prize of $7,000, $77,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (328), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 328-0000001-000.

L. Pack - A pack of "SUPER LUCKY 7'S" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER LUCKY 7'S" Instant Game No. 328 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER LUCKY 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) play symbols. In the bonus area, if the player finds a "7" symbol in any spot in the bonus area, the player will win the prize shown. In Game 1, if the player gets three 7's in a row, column or diagonal the player will win the prize on the arrow. In Game 2, if the player rolls an "11", the player will win the prize shown. If the player rolls a "7", the player will win double the prize shown. In Game 3, if the player gets 3 like symbols across in the same play, the player will win the corresponding prize. If the player gets 3 "7" symbols across in the same player, the player will win double the prize. In Game 4, if the player matches any of the Your Numbers to the Winning Number, the player will win the prize shown for that number. If the player matches a "7", the player will win double the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 (forty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 42 (forty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 42 (forty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prizes can be won in each game, all prize symbols may be used in non-winning locations.

C. Bonus: No duplicate non-winning play symbols.

D. Bonus: No duplicate non-winning prize symbols.

E. Game 1: All games will contain either 5 X's and 4 7's or 4 X's and 5 7's.

F. Game 1: This game can only win once.

G. Game 2: No duplicate non-winning play symbols.

H. Game 2: No duplicate non-winning prize symbols.

I. Game 2: The total of Roll 1 + Roll 2 will never equal 7 or 11.

J. Game 2: The total of Roll 3 + Roll 4 will never equal 7 or 11.

K. Game 3: No duplicate non-winning prize symbols.

L. Game 3: There will be no more than 2 pairs of like non-winning symbols on a ticket.

M. Game 4: No duplicate non-winning prize symbols.

N. Game 4: No duplicate non-winning Your Number play symbols.

O. Game 4: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

P. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LUCKY 7'S" Instant Game prize of $7.00, $10.00, $14.00, $21.00, $28.00, $77.00, or $177, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $77.00 or $177 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SUPER LUCKY 7'S" Instant Game prize of $777, $7,000 or $77,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LUCKY 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUPER LUCKY 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SUPER LUCKY 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,973,375 tickets in the Instant Game No. 328. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 328 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$7	797,002	7.49
$10	318,580	18.75
$14	318,361	18.76
$21	318,542	18.75
$28	139,382	42.86
$77	32,123	185.95
$177	1,307	4,570.29
$777	200	29,866.88
$7,000	6	995,562.50
$77,000	6	995,562.50

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.10. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 328 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 328, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200206157

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 20, 2002

♦ ♦ ♦

North Central Texas Council of Governments

Request For Proposals to Collect Traffic Data on Limited-Access Highways in the Dallas-Fort Worth Metropolitan Area Via Remote Sensing

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments is requesting written proposals from consultants to collect and analyze data on the traffic conditions on the limited-access highways in the Dallas-Fort Worth Metropolitan Area via low-level aerial photography or other non-intrusive remote-sensing data collection techniques. NCTCOG desires to enhance its information system for monitoring transportation system infrastructure and performance as part of the Congestion Management System. Through the use of low-level aerial photography or other remote-sensing data collection techniques, NCTCOG seeks to conduct a data collection and analysis effort on portions of the transportation system. The purpose of this effort is to better understand and measure the effects of traffic congestion in the morning and evening peak periods. This study will focus on the identification of bottlenecks and the measurement of system performance on the limited- access highway transportation system.

Due Date

Proposals must be submitted no later than 5 p.m., Central Time, on Friday, November 1, 2002, to Dan Rocha, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. To obtain copies of the Request for Proposals, contact Dan Rocha at (817) 695-9265.

Contract Award Procedures

The firm selected to perform this study will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000(d) to 2000(d)(1); and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200206226
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 25, 2002

♦ ♦ ♦

North Texas Workforce Development Board

Workforce Investment Act (WIA) Providers of Training Services

ADULT AND YOUTH

The North Texas Workforce Development Board (Board), Inc. and Texas Workforce Commission are seeking training provider applicants for possible placement on the statewide list of approved training facilities in support of the Workforce investment Act (WIA). WIA performs Federal job training programs with a comprehensive workforce investment system to help Americans access tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. The Board is administrative entity for WIA programs within the North Texas Workforce Delivery Area, including: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young counties. Eligible training providers are: post-secondary educational institutions, entities that carry out programs under the National Apprenticeship Act and, other public or private providers of a program of training services. Obtain additional information by contacting John Chandler at the North Texas Workforce Development Board, Inc., 1101 Eleventh Street, P.O. Box 4671, Wichita Falls, TX 76308, 940/767-1432, FAX 940/322-2683, or email at John.Chandler@twc.state.tx.us.

TRD-200206218
Mona Williams-Statser
Executive Director
North Texas Workforce Development Board
Filed: September 24, 2002

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On September 18, 2002, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Sage Telecom of Texas, LP, 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 26656. 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 26656. 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 22, 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 26656.

TRD-200206154
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2002

Notice of Amendment to Interconnection Agreement

On September 18, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Trinity Valley Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26658. 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 26658. 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 22, 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 26658.

TRD-200206155
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2002

Notice of Amendment to Interconnection Agreement

On September 18, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Birch Telecom of Texas Ltd., LLP, 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 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26659. 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 26659. 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 22, 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 26659.

TRD-200206156
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2002

Notice of Amendment to Interconnection Agreement

On September 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and TCG Dallas, 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 26676. 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 26676. 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 24, 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 26676.

TRD-200206201
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Amendment to Interconnection Agreement

On September 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and AT&T Communications of Texas, LP, 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 26677. 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 26677. 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 24, 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 26677.

TRD-200206199
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Amendment to Interconnection Agreement

On September 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Teleport Communications Houston, 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 26678. 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 26678. 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 24, 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 26678.

TRD-200206207
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 20, 2002, for a certificate of convenience and necessity to construct a 115 kV transmission line in El Paso County, Texas.

Docket Style and Number: Application of El Paso Electric Company (EPE) for Certificate of Convenience and Necessity for Proposed 115 kV Transmission Line in El Paso County, Texas. Docket Number 26670.

The Application: EPE proposes to construct a 115 kV transmission line in El Paso County, Texas. The project is located in the Upper Valley area of El Paso and Dona Ana Counties. The new transmission line will connect the Montoya substation located near the intersection of Artcraft and IH-10 with the Santa Teresa substation located near the Santa Teresa Airport in Santa Teresa, New Mexico. EPE states that the proposed 8.23-mile line will provide transmission service between EPE's Santa Teresa and Montoya Substations to accommodate for the rapid residential and industrial growth occurring in and around the Santa Teresa and upper valley area and to provide for anticipated growth in the near future.

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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 26670.

TRD-200206198
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

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

On September 18, 2002, In Touch Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60349. Applicant intends to (1) remove the resale-only restriction; and (2) expand its geographic area to include the entire State of Texas.

The Application: Application of In Touch Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26653.

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 October 9, 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 No. 26653.

TRD-200206153
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2002

Notice of Application for an Amendment to a Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 9, 2002, to amend a certificate of convenience and necessity for a minor boundary change in Wise County, Texas.

Docket Style and Number: Application of Central Telephone Company of Texas doing business as Sprint to Amend Certificate of Convenience and Necessity for a Minor Boundary Change in Wise County. Docket Number 26613

The Application: Central Telephone Company of Texas doing business as Sprint (Sprint) filed an application to amend its Certificate of Convenience and Necessity. In the application, Sprint states that the amendment allows for a minor boundary change in order for a customer to avoid excessive construction charges. Sprint adds that the boundary change would allow a customer currently in Sprint's territory to be served by Nortex Communications. Sprint lists the two exchanges involved: Sprint's Alvord exchange and Nortex Communication's Sunset exchange.

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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 26613.

TRD-200206210
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On September 19, 2002, NeoPrism Networks, L.P. filed an application with the Public Utility Commission of Texas (PUC) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60406. Applicant intends to relinquish its certification.

The Application: Application of NeoPrism Networks, L.P. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 26661.

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 October 9, 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 26661.

TRD-200206211
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Application of Filing Made Pursuant to Substantive Rule §26.208

Notice is given to the public of Southwestern Bell Telephone Company's application filed with the Public Utility Commission of Texas (commission) on September 5, 2002 to introduce the Inform 911 Service feature, a non-basic service.

Docket Title and Number: Application of Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company for Administrative Change to its Integrated Services Tariff, Section 2 and its Private Line Service Tariff, Section 6 - Primary Rate ISDN SmartTrunk Inform 911 Service Introduction Pursuant to Substantive Rule §26.208. Docket Number 26599.

The Application: On September 5, 2002, Southwestern Bell Telephone L.P. doing business as Southwestern Bell Telephone Company (SWBT) filed an application to make an administrative change to its Integrated Services Tariff, Section 2, Sheet 2, 2.1, 13, 16 and 16.1 and its Private Line Service Tariff, Section 6, Index Sheet and Sheets 1 through 6. SWBT states the filing is submitted for the introduction of the Inform 911 Service feature, a non-basic service.

On or before October 18, 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 26599.

TRD-200206142
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2002

Notice of Interconnection Agreement

On September 16, 2002, Alenco Communications, Inc. and Dobson Cellular Systems, 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 26645. 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 26645. 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 18, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26645.

TRD-200206118
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2002

Notice of Interconnection Agreement

On September 16, 2002, Riviera Telephone Company, Inc. and Dobson Cellular Systems, 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 26646. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26646. 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 18, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26646.

TRD-200206119
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2002

Notice of Interconnection Agreement

On September 19, 2002, Central Texas Telephone Cooperative, Inc. 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 26660. 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 26660. 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 23, 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 26660.

TRD-200206205
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Interconnection Agreement

On September 19, 2002, Poka Lambro Telecommunications, Ltd. and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of an amendment to an 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 26664. 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 26664. 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 23, 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 26664.

TRD-200206204
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Notice of Interconnection Agreement

On September 19, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Williams Local Network, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26666. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26666. 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 23, 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 26666.

TRD-200206203
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 2002

Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200206140
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 20, 2002

Record of Decision

Record of Decision: U.S. Department of Transportation, Federal Highway Administration; IH 10 West, From Taylor Street to FM 1489; Harris, Fort Bend, and Waller Counties; FHWA-TEX-EIS-00-01-F.

PREFERRED ALTERNATIVE DECISION

Based on the IH 10 West Final Environmental Impact Statement (FEIS) and Final Section 4(f) Statement, the Combined Alternative has been selected as the preferred alternative for the proposed project.

The proposed action for the reconstruction and expansion of IH 10 freeway as described in Section 1.8 of the FEIS would add two Special Use or Managed Lanes (ML) in each direction between IH 610 and SH 6, a High Occupancy Vehicle (HOV) lane in each direction between SH 6 and the City of Katy and one through general purpose or Single Occupancy Vehicle (SOV) lane in each direction between IH 610 and the

City of Katy and from Brookshire to FM 1489. The Managed Lanes will replace the existing one lane HOV lane between IH 610 and SH 6. Auxiliary lanes would be added to provide lane balance at major interchanges (i.e., IH 610, Beltway 8, SH 6 and Grand Parkway). The proposed roadway will follow the existing IH 10 Katy Freeway alignment encompassing the existing parallel Union Pacific Railroad, now owned by Texas Department of Transportation (TxDOT), and the Old Katy Road right-of-way (ROW) taking ROW from both the north and south sides of the existing facility.

In addition, the proposed action will bring the existing freeway up to current TxDOT and Federal Highway Administration (FHWA) design standards and provide continuous frontage roads throughout most of the corridor from FM 1489 to Taylor Street. It will also provide for pedestrian and bicycle improvements associated with the included frontage road improvements. The Combined Alternative will preserve maximum flexibility for future modification of the ML in the center of the freeway to meet future needs within the corridor, including conversion to a fixed guideway facility, automated highway, or other future transit alternative. The Combined Alternative will provide for a major increase in the ML capacity while also providing a modest increase in the SOV capacity between IH 610 and FM 1489.

In summary, the completed facility will provide a total of four general purpose lanes in each direction between IH 610 and SH 6 and three general purpose lanes in each direction between SH 6 and FM 1489. There will be four Managed Lanes between IH 610 and SH 6 and one lane HOV each direction between SH 6 and the City of Katy. The mainlane section of IH 10 between IH 610 and Taylor Street will remain, as it is currently, five general purpose lanes in each direction.

The proposed action for the reconstruction and expansion of the IH 10 Katy Freeway is part of the Houston-Galveston Area Council (H-GAC) FY 2002-4 Transportation Improvement Program (TIP) and the 2022 Metropolitan Transportation Plan (MTP.) The TIP and MTP were found to conform under EPA's Transportation Conformity Rules by the US Department of Transportation on June 4, 2002.

ALTERNATIVES CONSIDERED

The purpose and needs for the IH 10 corridor were identified based on the Major Investment Study (MIS) analysis of the existing traffic congestion within the corridor, projected population and employment growth trends, and extensive dialogue with concerned citizens. Public input included discussions with state, local, and regional agencies involved in transportation and comprehensive planning in the Houston region, as well as input solicited from local citizens.

West Houston has traditionally been one of the fastest growing sectors of the Metropolitan Region, both in terms of population and employment growth. In the future, population growth is projected to result in a corridor population increase of 42% (1990 to 2020). However, some portions of the corridor are projected to grow by as much as 130% for the same time period. For the same period, employment growth is projected to be equally as strong within the corridor, with average growth in employment in excess of 44%. These growth projections point to major increases in travel demand along the IH 10 corridor.

The recommendation from the MIS was the Alternative V-2 (ML-SOV) as the Locally Preferred Modal Alternative based on the incremental evaluation process of the MIS. Following the recommendation of the MIS Steering Committee, Alternative V-2 was presented to the public, as the draft locally preferred modal alternative at a series of public open houses and meetings July 8, 9, and 10, 1997.

Once the locally preferred modal alternative was selected, it was necessary to examine alternative alignments for the improvements within the corridor. A variety of alignments were studied in order to select an alternative that implements the preferred modal alternative with the least environmental, social and economic impacts. To that end, five different alternatives were developed and analyzed for impacts including the No-Build Alternative and the Transportation System Management/ Transportation Demand Management (TSM/TDM) Alternative. The description and analysis of the three build alignment alternatives follows.

The "All North Alternative" would acquire all needed additional ROW north of the existing IH 10 corridor. Where additional ROW is not needed, the alignment would remain within the current ROW limits.

The "All South Alternative" would acquire all needed additional ROW south of the existing IH 10 corridor. Where additional ROW is not needed, the alignment would remain within the current ROW limits.

The "Combined Alternative" is a combination of ROW acquisition from both the north and south sides of the existing IH 10 corridor. The alignment was oriented to utilize Old Katy Road and the railroad ROW acquired by TxDOT.

The evaluation of the three alignment alternatives, the No-Build and the TSM/TDM alternatives in Sections 3.0 and 4.0 of the FEIS was based on economic, social, and environmental resources of the affected environment. These resources included land use, socioeconomic conditions, noise environment, air quality, farmlands, water resources, ecological resources, cultural resources, hazardous materials, visual and aesthetic qualities, Section 4(f) properties, and construction. The impacts were evaluated by using a systematic interdisciplinary approach. A matrix in Chapter 2 of the FEIS also illustrates the comparison of the alternatives. Several factors discussed below played a major role in the selection of the preferred alignment alternative.

The All North Alternative would require a total of 127 building displacements including 60 single-family residences, one (1) multi-family building (78 units), 63 commercial buildings (222 units), one (1) public facility (utility), and two (2) nonprofit organizations (YMCA and Spring Branch Church of the Nazarene).

The All South Alternative would require a total of 131 building displacements including 15 single-family residences, three (3) multi-family buildings (154 units), 112 commercial buildings (1881 units), one (1) non-profit organization (Houston First Baptist Church).

The Combined Alternative would require a total of 129 building displacements including 72 single-family residences, two (2) multi-family buildings (122 units), 53 commercial buildings (871 units) and two (2) non-profit organizations (YMCA and Spring Branch Church of the Nazarene).

In addition to potential displacements of commercial, residential, public facilities, and non-profit organizations, potential displacements of gravesites along the IH 10 corridor were also considered. The All North Alternative would displace approximately 3,300 gravesites within the proposed ROW. The All South Alternative would impact approximately 259 gravesites within proposed ROW. The Combined Alternative will impact 2, possibly 4 graves within the existing ROW, but would avoid impacts to the numerous gravesites that are located in the proposed ROW of the All North and All South Alternatives.

All three build alternatives would transverse the same waters of U.S. since the alternatives follow the existing linear IH 10 corridor. Potential jurisdictional wetlands, also commonly called fringe wetlands, were observed adjacent to some of the waters of the U.S. associated within the existing and proposed ROW. Preliminary wetland investigations were conducted for the alternatives using resources such as the National Wetland Inventory (NWI) maps. From this investigation, the All South Alternative would impact more wetland areas than the All North Alternative or the Combined Alternative.

The FHWA traffic noise modeling software was used to calculate existing and predicted traffic noise levels for the three build alternatives. The number of potential noise impacts includes 1375 receivers along the All North Alternative, 1313 receivers along the All South Alternative, and 1386 receivers along the Combined Alternative. The results from the preliminary noise analysis do not provide as clear a distinction between alternatives. The Combined Alternative potentially causes more noise impacts, but the number of impacts is only marginally higher (11 receivers) than the All North Alternative. Preliminary calculations indicate that noise barriers may be feasible and reasonable for several residential areas adjacent to each of the alternatives.

SECTION 4(f)

None of the alternatives would impact wildlife refuges; however, the proposed project would impact publicly owned parklands, which serve as recreational areas. Approximately 0.421 acre would be taken from an undeveloped park and another 0.672 acre would be taken from a developed park, both of which are located in the City of Spring Valley, north of the existing IH 10 corridor. TxDOT would compensate the City of Spring Valley with the purchase of land of comparable or greater value for their use as parkland. Therefore, as required, a Section 4(f) Statement was prepared due to the proposed impacts of these parklands. None of the alternatives would impact any other areas of unique scenic beauty or other lands of national, state, or local importance.

The frontage road from Studemont to Taylor Street has been eliminated from the proposed design to avoid impacts to the White Oak Bayou floodplain. There will be no impacts to Stude Park which is a Section 4(f) property located adjacent to the existing IH 10 ROW.

Based on the alternative analysis for the IH 10 corridor, the Combined Alternative was selected as the preferred alignment alternative. Given its combination of ROW acquisition from both the north and south sides of the existing IH 10 corridor, the Combined Alternative will produce the fewest negative impacts and the most positive benefits. While adhering to applicable design standards, the amount of additional ROW required north or south of the corridor at any one location was minimized along the Combined Alternative to reduce impacts to adjacent landowners and the environment. The Combined Alternative will accommodate the demand for a safe and efficient transportation system.

In summary, the Combined Alternative will provide substantial long-term benefits to both the traveling public and the communities in and along the IH 10 corridor through improved traffic and transit service. The improved mobility for the IH 10 corridor will accommodate the extensive growth anticipated to occur in the area.

The FEIS indicates that, although there are long-term, potentially adverse social, economic, and environmental impacts from the proposed action, the beneficial impacts outweigh the negative impacts. The Combined Alternative best meets the purpose and need of the proposed project as described on Section 1.0 of the FEIS.

MEASURES TO MINIMIZE HARM

Land use for the IH 10 corridor project reflects two geographically distinct land use patterns. High-density commercial, industrial development is intermixed with residential development in Segments 1-3 [between Taylor Street and SH 6 (Addicks Road)]. These three segments are located within the City of Houston and the Memorial Villages. Segments 4 & 5 [between SH 6 (Addicks Road) and FM 1489] are comprised of sparsely developed, low-density residential and agricultural uses with the exception of moderately dense development at the City of Katy's Pin Oak interchange. Katy Mills Mall, which is located at this interchange, is a traffic generator. Associated low-density commercial development is typically clustered near other major interchanges.

By definition, a majority of the IH 10 corridor is classified as urban. The exceptions to this urban classification is Segment 5 (between the City of Katy and FM 1489) which has undeveloped, primarily agricultural lands. There is sufficient right-of-way along Segment 5 to support the Combined Alternative without extending beyond land dedicated for transportation purposes.

The Combined Alternative will require a total of 129 building displacements including 72 single-family residences, two (2) multi-family buildings (122 units), 53 commercial buildings (871 units) and two (2) non-profit organizations (YMCA and Spring Branch Church of the Nazarene). A number of utilities are also expected to require relocation and/or realignment for compatibility with the Combined Alternative. Comparable properties are available for relocation as described in Section 4.4 of the FEIS.

An environmental justice analysis was conducted to determine if the Combined Alternative would disproportionately impact minority or low-income populations. Ten (10) residences will be displaced in Census Tract 514.02 (Segment 1) which is a low-income, predominantly minority area. However, approximately 57 homes will be displaced in Census Tract 441.01 (Segment 2), which is characterized by a higher income, predominantly white population. Therefore, it was concluded based on the evaluation of census data that minority or low-income populations are not receiving disproportionately high or adverse impacts from proposed improvements.

A review of the National Register of Historic Places (NRHP) revealed 92 properties greater than fifty years of age within the Area of Potential Effect, which is defined as 150 feet on either side of the proposed ROW. All 92 properties are located in Segment 1, from Taylor Street to IH 610. Of the 92 potentially eligible properties identified, two were identified as previously listed on the NRHP and four additional structures were determined eligible for the NRHP through consultation with the THC. There will be no ROW acquisition from any of the six listed or eligible structures under the Combined Alternative. As stated in a letter from the THC dated, October 2, 2001, coordination between TxDOT and THC resulted in a determination of no adverse effect for the six properties.

Cemetery eligibility coordination between TxDOT and the THC was conducted for two (possibly three) locations of reported historic-era burials within existing ROW of the IH 10 corridor. One cemetery is located between existing IH 10 and the abandoned railroad corridor just west of Eldridge Parkway. This cemetery contains from two to four graves. Two other areas located west of Langham Creek ROW of Segment 3 may contain other potential historic-era burials. As stated in a letter from the THC dated October 4, 2001, it has been determined that none of the cemeteries meet the criteria of eligibility for the NRHP. However, in compliance with the Texas Health and Safety Code (711.004), a plan to move the graves to another nearby cemetery in consultation with descendants and the county court prior to construction has been reviewed and approved by the Texas Historical Commission.

As stated in a letter dated December 8, 1995 from the U.S. Army Corps of Engineers (USACE), it is likely that a USACE permit will be required for this project based on their jurisdiction under Section 404 of the Clean Water Act. The selection of a permit type will be made once the design has progressed far enough for that determination to be made. TxDOT is aware that a detailed evaluation of the waters of the U.S. and potential wetlands within the Combined Alternative will be necessary to determine the need of a USACE Section 404 permit. Any impacts to waters of the U.S. will be avoided, minimized, and mitigated where possible. Continued coordination with the USACE is anticipated as appropriate.

The Combined Alternative will not increase the base flood elevation to a level that will violate applicable floodplain regulations and ordinances. The hydraulic design for this project will be in accordance with current TxDOT and FHWA policies and standards. The proposed highway facility will permit the conveyance of the 100-year flood, inundation of the highway being acceptable, without causing major damage to the highway or other property.

Preliminary calculations have indicated that the Combined Alternative will result in traffic noise impacts along the proposed IH 10 corridor. A more detailed noise analysis is being performed and barriers will be proposed where reasonable and feasible.

During the construction phase of the Combined Alternative, there is a possibility that noise levels will be greater than normal in the areas adjacent to the ROW due to operations normally associated with road construction. Construction is normally limited to daylight hours when occasional loud noises are more tolerable. Extended disruption of normal activities is not considered likely due to the relatively short-term exposure periods imposed on any one receiver. Every reasonable effort will be made to minimize construction noise.

A regulatory data review and coordination with EPA and Texas Natural Resource Conservation Commission (TNRCC) identified approximately 143 permitted and nonregulated hazardous waste sites within 300 feet of the Combined Alternative. Of these locations, 54 are registered storage tank sites. Of the 54 registered storage tank sites, 38 have been recorded as leaking underground storage tanks. Four No Further Remedial Action Planned (NFRAP) sites, two Emergency Response Notification System (ERNS) sites, and three Voluntary Cleanup Program (VCP) sites were identified within the study area. One site within the old railroad ROW is being mitigated at this time.

The contractor will take appropriate measures to prevent, minimize, and control the spill of hazardous materials in the construction staging area. The use of construction equipment within sensitive areas will be minimized or eliminated entirely. All temporary construction materials used for this project will be removed as soon as work schedules permit.

Harris County and the surrounding seven counties (including Waller and Fort Bend Counties) are in non-attainment of the ozone air quality standard. The State of Texas in coordination with the Houston - Galveston Area Council has developed and submitted a State Implementation Plan (SIP) to the Environmental Protection Agency (EPA) demonstrating the area will attain the ozone standard by 2007. The current Houston Galveston Metropolitan Transportation Plan (MTP) conforms to the transportation budget within the SIP. The Combined Alternative is, as required by EPA conformity regulations, part of the conforming 2022 MTP and FY 2002-2004 Transportation Improvement Program.

Construction may temporarily degrade air quality through dust and exhaust gases associated with construction equipment. Measures to control dust will be considered and incorporated into the final design and construction specifications.

Existing vegetation located along the vicinity of the project area consists of fragmented woodland areas, such as hardwood trees and shrubs. As new development along the project area continues, some woodland areas described in Section 3.7.3 are planned to be removed prior to the construction of the proposed project by private developers.

Minimal impacts to wildlife are expected but undoubtedly some species within the proposed ROW may be displaced. However, the Combined Alternative follows the existing alignment and as stated in letter from the U.S. Fish and Wildlife Service (USFWS) dated February 9, 1996, the widening and upgrading of existing roadways minimizes impacts to ecosystems.

In accordance with the Migratory Bird Treaty Act (MBTA), the removal of trees and clearing of the ROW will either be conducted outside of the breeding season of the bird species in this area or the ROW will be surveyed for active nests to provide protection of the nests. It is anticipated that there will be minimal impacts to migratory bird populations.

The Combined Alternative will not affect any threatened or endangered species. Coordination with the USFWS in a letter dated February 6, 1996, indicated the presence of the endangered Texas prairie dawn near IH 10 in Barker and Addicks Reservoirs. However, on January 10, 2001, TxDOT personnel, who have participated in previous surveys in the same corridor, conducted a survey for the Texas prairie dawn and no suitable habitat was observed.

MONITORING AND COMMITMENTS PROGRAM

All commitments made in the FEIS with regard to mitigation measures will be implemented and monitored throughout the remaining phases of project development.

Archeological investigation studies for all areas of the Combined Alternative have been completed and coordinated with the THC. The THC concurs that no archeological properties eligible for the National Register will be affected by the proposed IH 10 expansion. TxDOT has committed to exhume the burials from the two small cemeteries and reinterred them into a perpetual care cemetery in accordance with the policies and guidelines of the THC. As stated in a letter from the THC on October 4, 2001, TxDOT's Exhumation and Reinterment Plan for the IH 10 corridor project has been reviewed by the THC and it has been concluded that the procedures outlined in the plan will satisfy the requirements of THC cemetery preservation guidelines.

In the event that evidence of archeological deposits is encountered during construction, work in the immediate area will cease and TxDOT archeological staff will be contacted to initiate accidental discovery procedures under provisions of the Programmatic Agreement among TxDOT, the THC, FHWA, and the Advisory Council on Historic Preservation and the Memorandum of Understanding between TxDOT and the THC.

Any potential impacts to jurisdictional waters of the U.S. or wetlands will be avoided and minimized to the greatest extent practicable and then mitigated in agreement with the USACE.

In order to comply with the TNRCC's 401 Water Quality Certification Conditions for Nationwide Permits, at least one best management practice (BMP) from each of the following three categories of on-site water quality management (erosion control, post-construction total suspended solids (TSS) control, and sedimentation control) must be implemented on the proposed project.

The Clean Water Act makes it unlawful to discharge storm water from construction sites into waters of the U.S. unless authorized by the EPA's National Pollutant Discharge Elimination System General Permit. Construction activities will disturb more than five acres within the project vicinity. Therefore, TxDOT will be required to submit a Notice of Intent to the EPA. TxDOT will also develop a Storm Water Pollution Prevention Plan for this project.

When a traffic noise impact occurs, noise abatement measures must be considered. Before any abatement measure can be incorporated into the project, it must be both feasible and reasonable. In order to be feasible, the measure should reduce noise levels by at least five dBAs at impacted receivers; and to be reasonable it should not exceed $25,000 for each benefited receiver. Noise abatement barriers will be offered where reasonable and feasible. Noise workshops will be held to determine the public interest in the construction of noise abatement barriers in the locations where it is deemed reasonable and feasible.

For the selected alternative, those sites within the existing and proposed ROW that pose a potential hazardous materials impact will be further investigated prior to or during the ROW acquisition process. Mitigation for hazardous materials within the existing and proposed ROW should be completed during the ROW acquisition process. Depending on the nature and extent of contamination encountered and project requirements; it may not be possible to complete the mitigation prior to construction. In such cases, special provisions must be developed and included in the construction plans to ensure that the project is constructed in a manner protective of human health and the environment. Older houses and buildings will be inspected for asbestos and other hazardous materials before demolition. Any contaminated buildings will be remediated according to Federal and State regulatory standards prior to demolition.

In accordance with the guidelines for beneficial landscape design, the landscaping design of this project will emphasize the use of native plants. Care will be taken to salvage native plants on the project site for replanting where possible. When salvageable plants are not available, commercially grown plants will be substituted. Steps will be taken in the design process to minimize impact to the natural habitat and prevent pollution by reducing the need for fertilizers or pesticides. Trimmings from plants in the landscaping will be recycled for mulch, and the resulting mulch used to reduce runoff and increase water use efficiency.

In accordance with Executive Order 13112 on invasive species, native plant species will be used in the landscaping where practicable.

COMMENTS ON FINAL EIS

As a result of the FEIS circulation for public comment, a letter dated December 19, 2001, was received from the Texas Natural Resource Conservation Commission (TNRCC). The letter states that the TNRCC has reviewed the FEIS and determined that it properly demonstrates that the National Ambient Air Quality Standard will be satisfied in terms of carbon monoxide concentrations. As stated in the FEIS, the project will accomplish this by controlling exhaust emissions at the construction sites by requiring contractors to use emission control devices and limiting unnecessary idling of construction vehicles. When the project is completed it will also reduce traffic congestion and encourage the use of Managed Lane facilities, which will increase ridesharing, thereby reducing the number of vehicles on the road. Furthermore, the proposed project is included in the 2022 Metropolitan Transportation Plan.

A letter dated November 27, 2001, was received from a private citizen who expressed interest in double-decking IH 10 as an alternative to widening the existing freeway. The scenario of double-decking IH 10 was considered as one of the alternatives during the Major Investment Study phase of the proposed project; however, the public comments were strongly against this design option and it was eliminated from further study.

CONCLUSION

Based on the analysis and evaluation contained in this project's Final Environmental Impact Statement and after careful consideration of a the social, economic, and environmental factors and input from the public involvement process, it is my decision to adopt the recommended Combined Alternative as the Proposed Action for this project.

This Record of Decision was signed by C.D. Reagan, Division Administrator, FHWA, Texas Division, on August 30, 2002.

TRD-200206253

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 25, 2002

♦ ♦ ♦

The University of Texas System

Consultant Proposal Request

The University of Texas of the Permian Basin requests, pursuant to the provisions of the Government Code, §2254.029, the submission of proposals leading to the award of a contract for Consulting Services. The University's objective is to contract with a qualified and experienced respondent to conduct an evaluation to determine the nature of utilization and scope of overall demand for use of a multipurpose events and conference center on the University campus.

An award for the services specified herein will be made following a procedure using competitive sealed proposals. Proposals will be opened publicly to identify the names of the RESPONDENTS, but will be afforded security sufficient to preclude disclosure of the contents of the proposal, including prices or other information, prior to award. After opening, an award may be made on the basis of the proposals initially submitted, without discussion, clarification, or modification, or on the basis of negotiation with any of the RESPONDENTS or, at UNIVERSITY'S sole option and discretion, UNIVERSITY may discuss or negotiate all elements of the proposal with selected RESPONDENTS which represent a competitive range of proposals. For purposes of negotiation, a competitive range of acceptable or potentially acceptable proposals may be established comprising the highest rated proposal(s). After the submission of a proposal but before making an award, UNIVERSITY may permit the offeror to revise the proposal in order to obtain the best final offer. UNIVERSITY may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. UNIVERSITY will provide each offeror with an equal opportunity for discussion and revision of proposals. Further action on proposals not included in the competitive range will be deferred pending an award, but UNIVERSITY reserves the right to include additional proposals in the competitive range if deemed in the best interest of UNIVERSITY.

UNIVERSITY reserves the right to award a Contract for all or any portion of the requirements proposed by reason of this request, award multiple Contracts, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to resolicit for proposals, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to temporarily or permanently abandon the procurement. If UNIVERSITY awards a contract, it will award the contract to the offeror whose proposal is the most advantageous to UNIVERSITY, considering price and the evaluation factors set forth in this Request for Proposal (RFP). The contract file must state in writing the basis upon which the award is made.

Interested parties may contact Bonnie Cotten at The University of Texas of the Permian Basin Purchasing Office for a copy of the RFP document by calling (915) 552-2791 or by e-mail at cotten_b@utpb.edu. An original and four copies of the proposal must be submitted by the Proposal submission deadline of October 29, 2002 at 3:00 P.M., Central Standard Time.

TRD-200206135
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: September 19, 2002

♦ ♦ ♦

Notice of Intent to Seek a Major Consulting Services Contract

Invitation to Provide Offers

As required by Chapter 2254, *Texas Government Code*, the University extends an invitation (the "Invitation") to qualified and experienced consultants interested in providing the consulting services described in this notice. Subsequent to changes in the insurance industry and significant increases in premiums and deductible amounts, the University has elected to self-insure against risks related to its Directors and Officers and Employment Practices Liability ("D&O/EPL"), instead of maintaining commercial policies of D&O/EPL Insurance. The University intends to procure the services of a consultant to perform a risk assessment of its D&O/EPL exposures and recommend an appropriate self-insurance program design. The consultant's assessment will include a full legal evaluation of potential D&O/EPL claims and exposures and an actuarial review of historical claim experience, including projections of future claim activity. The consultant will recommend a design for the self-insurance program based upon the results of the assessment. The program design will include coverage guidelines found in a comparable insurance policy, a recommendation regarding a funding structure and the development of requirements for administration of the program.

Name of Contact

Consultants interested in submitting an offer can obtain more information by requesting a copy of the "Invitation for Consultants to Provide Offers of Consulting Services for D&O/EP Liability Program" from:

Ms. Kitt Krejci

Assistant Director

Office of Business and Administrative Services

The University of Texas System

201 West 7th Street, Suite 424

Austin, Texas 78701

Telephone: 512-499-4366

Email: kittkrejci@utsystem.edu

Closing Date and Time

All offers must be received no later than **5:00 p.m. Central Time** on **October 25, 2002** (the "Submittal Deadline"). Submissions received after the Submittal Deadline will not be considered.

Procedure for Awarding Contract

Selection of the Successful Offer submitted in response to the Invitation by the Submittal Deadline will be made using the competitive process described below. If the University awards a contract, the successful offer ("Successful Offer") will be the offer submitted in response to the Invitation by the Submittal Deadline that is the most advantageous to the University, considering the demonstrated competence, knowledge and qualifications of the respondent, as well as the reasonableness of the proposed fee for services and other evaluation factors established by the University. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations.

The selection of the Successful Offer may be made by the University on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by the University on the basis of negotiation with any of the consultants. At the University's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. The University will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. The University will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, the University reserves the right to include additional offers in the competitive range if deemed to be in its best interest.

After the submission of offers but before final selection of the Successful Offer is made, the University may permit a consultant to revise its offer in order to obtain the consultant's best final offer. The University is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by the University. The University reserves the right to (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in the Invitation with one or more consultants, (b) reject any and all offers and re-solicit offers or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of the University.

TRD-200206225

Francie A. Frederick

Counsel and Secretary to the Board of Regents

The University of Texas System

Filed: September 25, 2002

♦ ♦ ♦

Texas Water Development Board

Request for Statements of Interest

The Texas Water Development Board (TWDB) is soliciting statements of interest for the development of a large-scale Demonstration Seawater Desalination Project. Interested parties are invited to provide a statement of interest to the TWDB no later than close of business on Friday, November 1, 2002.

Background: On April 29, 2002, Governor Perry tasked the TWDB with developing a recommendation for a large-scale Demonstration Seawater Desalination Project.

The goals of the seawater desalination initiative are to demonstrate:

• the State's resolve to add large-scale seawater desalination to the mix of water supply sources to meet long-term water needs in the State with a drought-proof source;

• that large-scale seawater desalination technologies can be feasibly implemented in Texas; and

• that large-scale seawater desalination projects are a cost-effective and environmentally sensitive means to meet water supply needs in the State.

A key feature of the demonstration project will be the opportunity it will offer for on-going research on alternative desalination technologies and their potential applications. The TWDB welcomes the participation of universities or other research organizations as team members in the preparation and submission of statements of interest.

To meet this charge, TWDB will prepare a project recommendation report that will be delivered to the Governor and the Texas Legislature in January 2003. TWDB will seek to identify a project proposal that has a strong potential for implementation.

TWDB anticipates that, in order to facilitate legislative action on the recommendation, it will need to include sufficient detail addressing location of the desalination plant, treatment methodology and plant capacity, concentrate disposal method and location, possible project owner(s) and operator(s), targeted water users (cities, industry, etc.), additional infrastructure needs, financing alternatives, identification of estimated potential subsidy requirements, regulatory recommendations regarding any legislative issues that may need to be addressed, possible project time line and any other information or endorsements provided by the regional water planning groups.

TWDB will primarily consider information contained in the 2001 Regional Water Plans and 2002 State Water Plan, Water for Texas, to identify potential demonstration seawater desalination projects. Additionally, as per guidance received from the regional water planning groups to expand the pool of potential projects, TWDB invites public and private entities to submit statements of interest for consideration under the Demonstration Seawater Desalination Project initiative. The responses to this request will be considered in the development of a recommendation for a demonstration seawater desalination project.

Statement of Interest Requirements: Ten complete copies and one electronic reproducible copy of the statements of interest are due no later than close of business on Friday, November 1, 2002. Please mail them to: Jorge Arroyo, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78711-3231.

Responses should be limited to no more than five 81/2 x 11 inch pages and should address the items listed below. Responses to the request for statements of interest may include appendices; however, supplemental information provided in addition to the five pages will only be considered at TWDB's discretion.

1. Project proponent(s): Identify the project proponent(s) and describe all partnerships or other type of arrangements affiliated with the proposal. Provide a summary of the project proponent(s) relevant qualifications.

2. Project description: Describe the proposed demonstration project, with emphasis on how it will address the goals for the seawater desalination initiative. Identify any relevant factors that increase the likelihood that the proposed project will be implemented.

3. Proposed project location: Provide a map showing the location of the proposed project's treatment facilities, intake and discharge facilities, and transmission lines to deliver the water to the intended users. If applicable, identify existing facilities, whether in use or abandoned, that are part of the proposed project. Discuss availability and accessibility of land for siting a desalination treatment plant and if available, any infrastructure upgrades that are anticipated to be necessary to support plant operation or product water delivery.

4. Water treatment process: Describe the proposed treatment processes, the plant treatment capacity and its potential to expand. Discuss the plant's finished water quality and provide an assessment of any stability issues in the proposed receiving distribution systems. Identify any specific technology demonstration features or technology research capabilities that may be part of the project concept. Discuss whether the project involves mixing with other non-saline or less saline sources and the impact such action has on the project's feasibility.

5. Concentrate disposal method: Describe the proposed method for disposing of the treatment process concentrate. Discuss any anticipated environmental considerations and solutions associated with the permitting of the proposed disposal method.

6. Service area and project beneficiaries: Describe the geographic area that would be served by the proposed project. Identify all potential customers of the proposed project. Identify any project benefits to other regions and/or water users, and/or relief to existing water sources that may result from implementation of the proposed project.

7. Support for the project: Describe endorsement obtained or expected for the proposed project from Regional Water Planning Group(s) and potential project beneficiaries.

8. Estimated cost of water delivered to receiving distribution networks: Provide a preliminary estimate of the cost of the facility's product water in dollars per acre-foot and of the transmission costs to deliver the water to the receiving distribution systems. Provide a comparative assessment of the current and projected cost of water to the potential project beneficiaries with and without the proposed project.

9. Funding: Describe the proposed financing structure for the proposed project. Describe financial capabilities and arrangements of all entities participating in the proposal. Identify expected level of state funding necessary to successfully implement the project. Discuss whether the project financing would require any legislative changes and whether it would require an increase in the private activity bond cap. Clarify whether the proposed ownership is private, non-profit or governmental.

10. Environmental and permitting considerations: Discuss any potential environmental impact that could result from the proposed project. Identify by statutory/regulatory reference federal and state permitting requirements applicable to the proposed project and the estimated timelines to satisfy those requirements.

11. Project schedule: Provide the proposed project implementation schedule.

12. Contact information: Identify the name, company, title and contact details for the person representing the proposed project's proponent.

Demonstration Seawater Desalination Project - Screening Criteria:TWDB will rely primarily on the following criteria to screen potential demonstration seawater desalination projects. Top ranked proposals resulting from the screening will be subjected to additional evaluation on the merits of the individual proposals.

1. Need/potential benefits - 25 points: Projected target population; relative need for additional water supplies by year 2020 under drought-of-record basis; relative cost of water to potential project customers (with project vs. without project); impact to other water resources of the State; other benefits, including environmental, site-specific, direct and indirect benefits to other water users in the State.

2. Siting advantages/benefits - 20 points: Proximity of treatment plan to place of need; use of existing intake/discharge facilities; raw water quality; concentrate disposal; environmental considerations.

3. State/regional/local support for the project - 15 points: Consistency with regional water plans; endorsement from regional water planning groups; endorsement from targeted water users.

4. Project cost (to be developed by TWDB staff) - 15 points: Total project cost; capital cost to the State; operation and maintenance cost.

5. Demonstration value of the proposed project - 25 points: Research and technology transfer features of the proposed project; ability of the project's proponent to implement the project within the next four years.

TRD-200206145
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 20, 2002

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TA**C*) 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 ***TA**C*.

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 ***TA**C*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.............950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2” diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State’s Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

□ **Change of Address**
(Please fill out information below)

□ **Paper Subscription**
□ One Year $200 □ First Class Mail $300

□ **Back Issue ($10 per copy)**
_______ Quantity

Volume ________, Issue #_______.
(Prepayment required for back issues)

NAME____

ORGANIZATION ___________________________________

ADDRESS _______________________________________

CITY, STATE, ZIP _________________________________

PHONE NUMBER _________________________________

FAX NUMBER ____________________________________

Customer ID Number/Subscription Number ____________________
(Number for change of address only)

Payment Enclosed via □ Check □ Money Order
Mastercard/VISA Number ______________________________
Expiration Date _____/_____ Signature ________________________

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at http://www.sos.state.tx.us.

Periodical Postage

PAID

Austin, Texas
and additional entry offices