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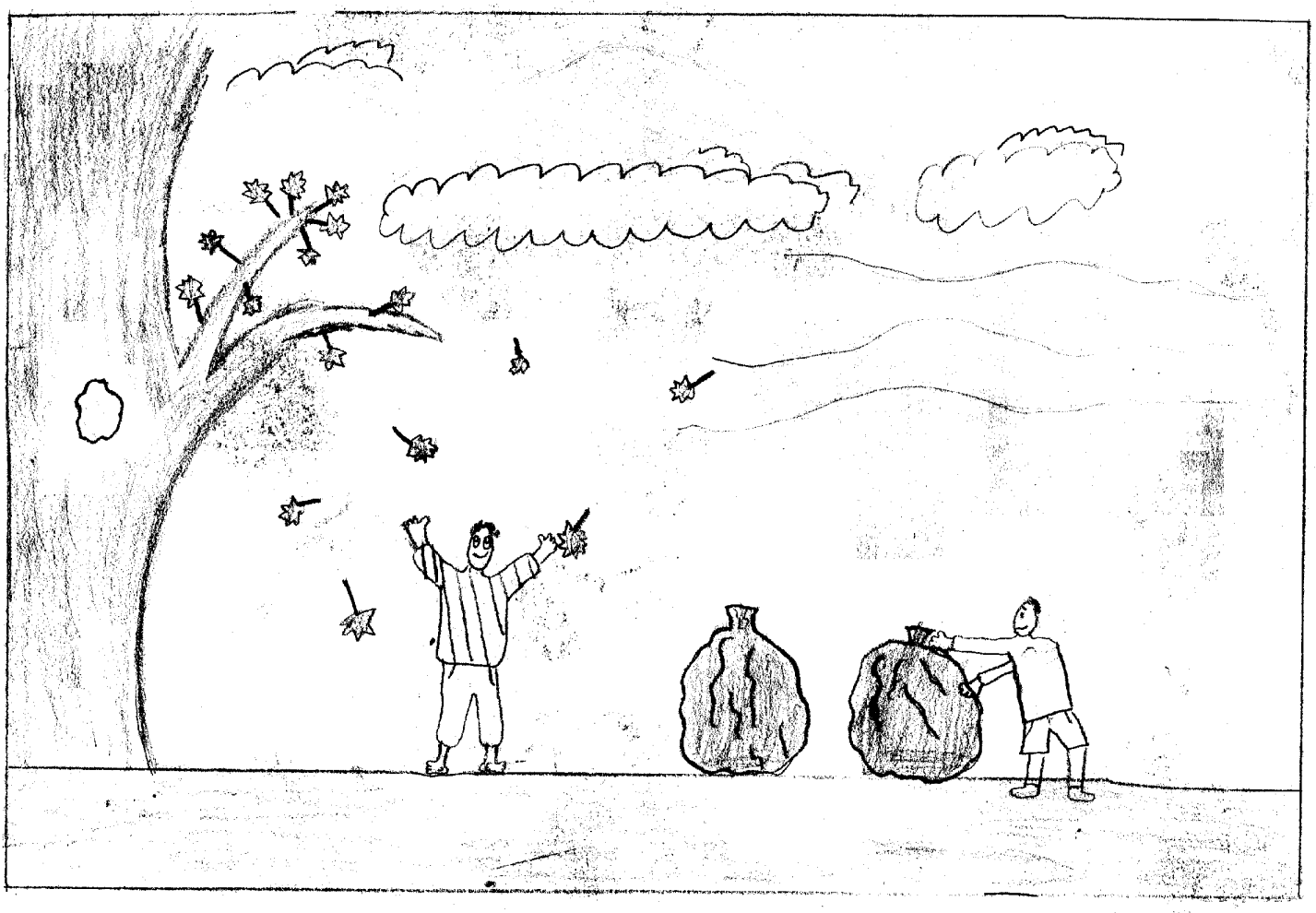

This month's front cover artwork:

Artist: *Andrew Miller*
5th Grade
K. Smith Elementary

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

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

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

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GOVERNOR

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Open Meetings

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

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

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

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

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

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

THE GOVERNOR

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

Executive Order

RP 8

Relating to the Governor's Task Force on Homeland Security

WHEREAS, recent terrorist attacks on our nation have threatened the peace and security of the people living in our state and have demonstrated the need for a rapid response to terrorist threats and acts; and

WHEREAS, one of the primary duties of government is to provide for the safety of its people and to ensure an awareness of the measures in place for their continued protection; and

WHEREAS, there exists an immediate need for assessing the current state of readiness by state and local entities to respond to possible threats and acts of violence, including the ability to aid victims and their families.

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

1. Creation of Task Force. A Governor's Task Force on Homeland Security (the "Task Force") is hereby created to advise the Governor on matters related to homeland security.

2. Composition and Terms. The Task Force shall consist of members appointed by the Governor.

The Governor will appoint one member to serve as chair and one member to serve as vice-chair.

The Governor may fill any vacancy that may occur and may any appoint other voting or ex officio, non-voting members as needed.

Any state or local officers or employees appointed to serve on the Task Force shall do so in addition to the regular duties of their respective office or position.

All appointees serve at the pleasure of the Governor.

3. Duties. The Task Force through its advisory efforts shall:

(a) provide assurance to Texas citizens of state and local preparedness to respond to terrorist threats and acts, both foreign and domestic;

(b) assess the current state of readiness by state and local entities to efficiently respond to terrorist threats and acts and effectively provide victim assistance; and

(c) develop and present recommendations, including fiscal impact assessments, to the Governor on how to enhance the ability of Texas to detect and deter acts of terrorism and coordinate state response to any terrorist attacks.

4. Coordination. The Task Force through its advisory efforts shall coordinate with national, state, and local entities and communicate with neighboring states and Mexico to address similar issues.

5. Report. The Task Force shall make regular reports to the Governor.

6. Meetings. Subject to the approval of the Governor, the Task Force shall meet at times and locations determined by the chair.

7. Administrative Support. The Office of the Governor and other appropriate state agencies shall provide administrative support for the Task Force.

8. Budget. The chair shall develop and submit a proposed budget to the Governor for approval.

9. Other Provisions. The Task Force shall adhere to guidelines and procedures prescribed by the Office of the Governor. All members of the Task Force shall serve without compensation. Necessary expenses may be reimbursed when such expenses are incurred in direct performance of official duties of the Task Force.

10. Effective Date. This order shall take effect immediately.

This executive order supersedes all previous orders and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 1st day of October, 2001.

Rick Perry, Governor

TRD-200106102

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURES

1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.47, 155.49, 155.51, 155.53, 155.55, 155.57, 155.59

The State Office of Administrative Hearings (SOAH) proposes amendments to §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.47, 155.49, 155.51, 155.53, 155.55, 155.57, and 155.59, concerning procedures at SOAH. In general, all of the rules including §§155.9 (concerning Request to Docket Case), 155.11 (concerning Seal), 155.27 (concerning Notice of Hearing), 155.33 (concerning Orders), 155.35 (concerning Certification of Questions to Referring Agency), 155.37 (concerning Settlement Conferences), 155.41 (concerning Procedure at Hearing), 155.47 (concerning Public Attendance and Comment at Hearing), and 155. 51 (concerning Evidence) have been modified to substitute the job titles now in use under SOAH's new administrative structure, to delete unnecessary language, and to achieve parallel construction and consistency within this chapter and, as much as practicable, within Chapter 159 (relating to Rules of Procedure for Administrative License Suspension Hearings) and Chapter 163 (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Services). In particular, references to SOAH have been substituted for references to the Office; the word judge has been substituted for the acronym ALJ; numerals have been spelled out, in accordance with *Harvard Blue Book* form; statutory and rules citations have been changed from session law references to citations to the bound volumes of statutes, updated, and rewritten to comport with the style recommended in *Texas Rules of Form*.

The other reasons for proposing the amendments are as follows: §155.1 (concerning Purpose and Scope) is proposed to change the effective date from 1998 to 2001 of the Public Utilities Commission and Texas Natural Resource Conservation Commission procedural rules adopted by reference; §155.3 (concerning Application and Construction of this Chapter) is proposed to amend subsection (c), which tracks the language of Texas Government Code Ann.§2003.050; to add new subsection (g), which tracks the language of Texas Rule of Civil Procedure 3 and Texas Government Code Ann. §312.003; and to add new subsection (h), which tracks the language of Texas Government Code Ann. §311.011; §155.5 (concerning Definitions) is proposed to include temporary judges in the definition of Administrative Law Judge; to extend the definition of Alternative Dispute Resolution (ADR) to the hybrid and adaptive ADR processes employed by SOAH; to eliminate reference in the rules to the term Office; to clarify the Mediated Settlement Conference procedure; and to define the acronym SOAH; §155.7 (concerning Jurisdiction) is proposed to add subsection (d), to clarify when the time in which a party is permitted or required to do something begins to run; §155.13 (concerning Venue) is proposed to allow the judge to consider all matters relevant to venue, and to place on an equal footing consideration of the costs to and preferences of all of the parties; §155.15 (concerning Powers and Duties of Judges) is proposed to make explicit the judge's authority to pose questions to witnesses; to permit sanctioning for failure to obey an applicable rule; but to eliminate the reference to sanctioning a party for failure to obey an order of the state agency on behalf of which the hearing is being conducted, because that power is not clearly within the scope of SOAH's authority; §155.17 (concerning Assignment of ALJs to Cases) is proposed to add new subsections (c) and (d), to track the recusal procedures set out in Texas Rule of Civil Procedure 18a, and to cause subsection (c) to be renumbered to new subsection (e) to more accurately reflect the requirements of Texas Government Code Ann.§2001.062(c); §155.19 (concerning Computation of Time) is proposed to clarify that subsection (a) applies with equal force regardless of the source of the deadline or time period; to make subsection (a) consistent with Texas Rule of Civil Procedure 4; and to add new subsection (c), which tracks Texas Rule of Civil Procedure 5 and

eliminates a process that does not require a motion or notice; §155.21 (concerning Representation of Parties) is proposed to require all representatives who are not licensed to practice law in Texas and whose authority is challenged to demonstrate their authority to appear; to add new subsection (c), which is based on Texas Rule of Civil Procedure 8, to provide a default answer to the question of who is due service of pleadings and orders; and to renumber subsection (c) to be new subsection (d); §155.23 (concerning Filing Documents or Serving Documents on the ALJ) is proposed to add new subsection (3)(A), which is based on Texas Rule of Civil Procedure 191.4 and intended to cut down on the amount of unnecessary material filed with SOAH; to eliminate subsection (4) specifying a time for filing documents, to comport with local practice in both the state and federal courts; to add new subsection (4) regarding facsimile filings, by eliminating the twenty page limit on filings and the 5:30 p.m. deadline, to comport with local practice in the state courts; and to add new subsection (5), which is based on Texas Rule of Civil Procedure 13 and intended to prohibit the filing of groundless or improper filings; §155.25 (concerning Service of Documents on Parties) is proposed to amend subsection (d)(3) to change the SOAH presumption of receipt of documents from five to three days, consistent with that used by State and Federal courts in Texas and throughout the country; to eliminate subsection (d)(4) because of the change to §155.23 deleting the 5:30 deadline; and to eliminate a redundant phrase in subsection (e); §155.29 (concerning Pleadings) is proposed to correct a citation error in subsection(a)(7); to delete the mandatory requirement that "good cause" assertions be supported by affidavits or other proof; to make the certificate of conference requirement applicable to all motions; and to add subsection (i), which explains that summary disposition pleadings are governed by §155.57 (concerning Summary Disposition); §155.31 (concerning Discovery) is proposed: (a) to add more discovery devices to the SOAH discovery practice; (b) to track Texas Rule of Civil Procedure 198.1 regarding when requests for admissions can be filed, but specify a shorter time frame; (c) to clarify that SOAH judges have authority to resolve disputes over requests for issuance of subpoenas or commissions; (d) to permit use of the new discovery procedures in Texas Rule of Civil Procedure 190 tailored to SOAH practice; (e) to delete reference to repealed Texas Rule of Civil Procedure 166b(6), and to address the timeliness of supplementation, in part by tracking Texas Rule of Civil Procedure 193.5; (f) to require the filing of written discovery objections and track the language in Texas Rule of Civil Procedure 193.2; (g) to change the SOAH procedure for objecting to discovery upon a claim of privilege or exemption to conform to the new procedures in the referenced Texas Rule of Civil Procedure sections; (h) to add subsection (l), which requires signing the referenced matters and establishes the effect of a signature, as set out in Texas Rule of Civil Procedure 191.3; (i) to track the language in Texas Rule of Civil Procedure 191.2 and to make the certification of conference requirement applicable to all discovery motions; and (j) to track the language in Texas Rule of Civil Procedure 192.6, establishing an express time limit for filing a motion for protective order, and to clarify the ramifications of using the wrong procedure; §155.39 (concerning Stipulations) is proposed to add legal and procedural matters as proper subjects for stipulations; to permit the filing of stipulations at prehearings; and to add new subsection (d), which tracks the language of Texas Rule of Civil Procedure 11; §155.43 (concerning Making a Record of Contested Case) is proposed to assure that a court reporter will be provided by the referring agency for hearings scheduled for longer than one day; to place responsibility for transcript costs on the referring agency, deleting reference to this issue in interagency contracts; and to address the procedure for broadcasting or televising proceedings, based on Texas Rule of Civil Procedure 18(c); §155.49 (concerning Conduct and Decorum) is proposed to recognize the fact that the standards of conduct in the Texas Lawyers' Creed are aspirational, not mandatory; §155.53 (concerning Consideration of Policy Not Incorporated in Referring Agency's Rules) is proposed to add an additional factor for consideration; §155.55 (concerning Failure to Attend Hearing and Default) is proposed: (a) to simplify the rule; (b) to eliminate the word "judgment" as inapplicable and substitute the word "proceeding"; (c) to require disclosure of the possibility of default in larger type; (d) to eliminate the requirement of certified or registered mail notice; (e) to eliminate original subsection (e) because it is superfluous; and (f) to add new paragraph (d) which recognizes that on occasion, parties miss hearings for good cause, and gives the judge a short time frame in which to exercise discretion to reopen a hearing, under such circumstances; §155.57 (concerning Summary Disposition and Dismissal) is proposed: to add new subsections, based in part on the Texas Rules of Civil Procedure, that provide additional detail for the summary disposition procedure, including the requirements for separate fact statements to simplify the judge's consideration of these motions; and to clarify and strengthen the procedure for dismissing cases for want of prosecution; and §155.59 (concerning Proposal for Decision) is proposed to add new subsection (c), which clarifies procedures regarding exceptions and replies, and makes explicit a judge's limited nunc pro tunc powers over proposals for decision.

Barbara C. Marquardt, Administrative Law Judge, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering them.

Barbara C. Marquardt, Administrative Law Judge, also has determined that for the first five- year period the amended rules are in effect the public benefit anticipated as a result of the rules will be twofold. First, the amended rules will ensure more efficient procedures for participants in contested case hearings. Second, the amended rules are more closely linked to practice under the Texas Rules of Civil Procedure, which should aid both hearings participants and judges in resolving contested case hearings. There will be no effect on small businesses as a result of enforcing the rules. There is no anticipated economic cost to individuals who are required to comply with the proposed rules.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Debra Anderson, Legal Assistant, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by facsimile to (512) 936-0770.

The amended rules are proposed under Texas Government Code Ann., Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of hearings procedural rules, and Texas Government Code Annotated, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Texas Government Code Annotated, Chapters 2001 and 2003.

§155.1. Purpose and Scope.

(a) Unless otherwise provided by statute or by the provisions of this chapter, this chapter will govern the processes followed by the State Office of Administrative Hearings (SOAH) in handling all [~~ad-judicative~~] matters referred to SOAH[~~the Office~~], including contested cases under the Administrative Procedure Act (APA), Texas Government Code Annotated (Tex. Gov't Code Ann.), Chapter 2001. Administrative License Suspension cases initiated by the Department of Public Safety are governed by Chapter 159 of this title (relating to Rules of Procedure for Administrative License Suspension Hearings). Arbitration procedures for certain enforcement action of the Department of Human Services are governed by Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Services).[~~, and by sections of this chapter made applicable to those cases by Chapter 159~~].

(b) Subject to further review and possible modification or deletion of this subsection, SOAH adopts by this reference those procedural rules of the Public Utility Commission of Texas (PUC) and Texas Natural Resource Conservation Commission (TNRCC) in effect on July[~~January~~] 1, 2001[~~1998~~], which address the formal contested case process in matters referred by those agencies, and which are not inconsistent with applicable law. This adoption does not include any PUC or TNRCC rules addressing the use of Alternative Dispute Resolution (ADR) processes at SOAH, which processes will be governed by the Governmental Dispute Resolution Act (GDRA), [~~75th Legislature, Chapter 934, §1, 1997, Texas General Laws 2932 (to be codified at~~] Texas Government Code Annotated, Chapter 2009[~~2008)~~]; SOAH rule provisions pertaining to ADR; and interagency contracts, memoranda of understanding, or other written agreements with referring entities.

§155.3. Application and Construction of This Chapter.

(a) Administrative hearings in cases conducted by SOAH[~~the Office~~] shall be conducted in accordance with the APA, when applicable, and with this chapter; provided that [~~:~~] the administrative law judge may, by order, modify and supplement the requirements of this chapter to promote the fair and efficient handling of the case and to facilitate resolution of issues, if doing so does not prejudice the rights of any person or contravene applicable statutes.

[~~(1) the administrative law judge (ALJ) may, by order, modify the requirements of this chapter and supplement other procedural requirements of law, to promote the fair and efficient handling of the case; and~~]

[~~(2) the ALJ may modify the procedural requirements of this chapter in appropriate cases to facilitate resolution of issues, if doing so does not prejudice parties' rights of any person or contravene applicable statutes.~~]

(b) (No change).

(c) The procedural rules of the state agency on behalf of which the hearing is conducted govern procedural matters that relate to the hearing only to the extent that these rules adopt the agency's procedural rules by reference, or as otherwise required by law.[~~If there is any conflict between these rules and the procedural rules of the TNRCC adopted in §155.1 of this title (relating to Purpose and Scope), the TNRCC's rules will control.~~]

(d) If there is any conflict between these rules and the procedural rules of the TNRCC[~~PUC~~] adopted in §155.1 of this title (relating to Purpose and Scope), the TNRCC's[~~PUC's~~] rules will control.

(e) If there is any conflict between these rules and the procedural rules of the PUC adopted in §155.1 of this title (relating to Purpose and Scope), the PUC's rules will control.[~~This chapter shall be construed to ensure the just and expeditious determination of every matter referred to SOAH. Not all contested procedural issues will be susceptible to resolution by reference to the APA and other applicable statutes, this chapter, and case law. When they are not, the presiding ALJ will consider applicable policy of the referring agency documented in the record in accordance with §155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules), the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums, in order to issue orders and rulings that are just in the circumstances of the case.~~]

(f) This chapter shall be construed to ensure the just and expeditious determination of every matter referred to SOAH. Not all contested procedural issues will be susceptible to resolution by reference to the APA and other applicable statutes, this chapter, and case law. When they are not, the presiding judge will consider applicable policy of the referring agency documented in the record in accordance with §155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules), the Texas Rules of Civil Procedure as interpreted and construed by Texas case law, and persuasive authority established in other forums, in order to issue orders and rulings that are just in the circumstances of the case.

(g) Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

(h) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

§155.5. Definitions.

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

(1) Administrative law judge [~~, ALJ,~~] or judge -- An individual appointed by SOAH's[~~the~~] chief administrative law judge [~~of the Office~~] under Tex. Gov't Code Ann.[~~Texas Government Code~~], Chapter 2003, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Tex. Gov't Code Ann. §2003.043.

(2) [~~ADR or~~] Alternative Dispute Resolution or ADR -- Processes used at SOAH [~~the Office~~] to resolve disputes outside of, or in connection with formal contested case hearing processes, including, but not limited to, mediation, mediated settlement conferences, mini-trials, early neutral evaluation, and arbitration.

(3) APA -- The Administrative Procedure Act (Tex. Gov't Code Ann.[~~Texas Government Code~~], Chapter 2001).

(4) Arbitration -- A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process, in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations can be binding or non-binding, depending on the agreement, statutes, or rules. (*See* Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Services) for procedural rules specifically governing the arbitration of certain nursing home enforcement cases referred by the Texas Department of Human Services).

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

(7) Chief judge [~~or Chief ALJ~~]-- The chief administrative law judge of SOAH[~~the Office~~].

(8) - (9) (No change).

(10) Law -- The United States and Texas Constitutions, state and federal statutes, [~~state agency~~] rules and [~~or federal~~] regulations, and relevant case law.

(11) [~~MSC or~~] Mediated settlement conference or MSC -- A [~~specialized~~] type of mediation during the pendency of a contested case at SOAH[~~the Office, but outside the formal adversarial process~~], which allows the parties to explore settlement possibilities in a confidential setting, with the assistance of one or more[~~an ALJ with no previous or subsequent responsibilities in the contested case acting as~~] third-party neutrals[~~neutral~~].

(12) Mediation -- A [~~non-adversarial approach to disputes that seeks a collaboratively reached consensual solution to conflicts through the assistance of a third-party neutral, who guides participants through a~~] confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them [~~designed to facilitate understanding of parties' real interests and conscious exploration of alternative solutions~~].

(13) Party -- A person or agency named, or admitted to participate, in a case before SOAH.[~~Office or SOAH - The State Office of Administrative Hearings.~~]

(14) Person -- Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government. [~~Party -- A person or agency named, or admitted to participate, in a case before the Office.~~]

(15) Pleading -- A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case. [~~Person -- Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government.~~]

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

(17) Referring Agency - A state board, commission, department, agency, or other entity that refers a contested case or other dispute to SOAH for process.[~~PUC -- The Public Utility Commission of Texas.~~]

(18) SOAH -- The State Office of Administrative Hearings. [~~Referring Agency -- A state board, commission, department, agency, or other entity that refers a contested case or other dispute to SOAH for process.~~]

(19) TNRCC -- The Texas Natural Resource Conservation Commission.

§155.7. Jurisdiction.

(a) (No change).

(b) SOAH[~~The Office~~] acquires jurisdiction over a case when an agency files a Request to Docket Case form. A separate Request to Docket Case form shall be completed and filed for each case referred to SOAH [~~the office~~].

(c) A Request to Docket Case form shall be considered filed on the date the form is received by SOAH[~~the office~~].

(d) A period of time established by these rules shall not begin to run until SOAH acquires jurisdiction over a case.

§155.9. Request to Docket Case.

(a) An agency shall submit to SOAH [~~the office~~] a completed Request to Docket Case form accompanied by legible copies of all pertinent documents, including but not limited to the complaint, petition, application, or other document describing the agency action giving rise to a contested case. An agency shall request one or more of the following actions on the Request to Docket Case form:

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

(b) If an agency requests a setting for hearing, SOAH[~~the Office~~] will provide the agency with the date, time, and place of such setting.

(c) If an [~~any~~] agency requests an assignment of an administrative law judge, SOAH[~~the Office~~] will assign a judge to consider motions and other pre-hearing matters.

(d) If an agency requests an alternative dispute resolution proceeding, SOAH[~~the office~~] will initiate the processes necessary to:

(1) select a mediator or arbitrator; and

(2) (No change).

(e) After a case has been placed on SOAH's [~~the office's~~] docket pursuant to a Request to Docket Case, any party may move for appropriate relief, including but not limited to discovery and evidentiary rulings, continuances, and settings.

(f) SOAH[~~The office~~] may refuse to accept for filing any Request to Docket Case that does not substantially conform to the filing procedures of this section.

§155.11. Seal.

SOAH[~~The Office~~] may maintain a seal to authenticate its official acts, including certifying copies of the administrative records of any matters heard by SOAH[~~the Office~~]. The seal shall have a star with five points and the words "State Office of Administrative Hearings" engraved upon it.

§155.13. Venue.

To assure that the hearing facility provides a neutral site, hearings shall be conducted at the site designated by SOAH[~~the Office~~] in accordance with applicable law. Unless required by law [~~or unless agreed to by all parties~~], hearings will be conducted outside of Austin only after the judge [~~ALJ~~] considers all relevant matters [~~raised by the parties,~~] including, but not limited to, the following factors: legislative restrictions on travel, the amount in controversy, estimated length of the hearing, availability of facilities, costs to and the preferences of the [~~private~~] parties [~~and referring agencies~~], and location of witnesses.

§155.15. Powers and Duties of Judges.

(a) (No change).

(b) The judge shall have the power to regulate prehearing matters, the hearing, and the conduct of the parties and authorized representatives, including the power to:

(1) (No change).

(2) take testimony, including the power to question witnesses;

(3) - (7) (No change).

(8) rule on motions of parties or the judge's[~~Judge's~~] own motion, including granting or denying continuance.

(9) - (10) (No change).

(11) for contested cases referred by an agency other than the PUC[Public Utility Commission] or the TNRCC[Texas Natural Resource Conservation Commission], and filed at SOAH[the State Office of Administrative Hearings] on or after September 1, 1997, impose appropriate sanctions against a party or its representative for:

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

(C) failure to obey an applicable rule or an order of the [administrative law] judge [or of the state agency on behalf of which the hearing is being conducted]; and

(12) (No change).

§155.17. Assignment of Judges[ALJs] to Cases.

(a) Assignment of judges[ALJs] to cases is at the discretion of the Chief Judge[ALJ] and the Chief Judge's[ALJ's] designees, and is not subject to request by a referring agency upon referral of a case or motion by any party, except as provided by subsection (b) of this section.

(b) On motion of a party or on the judge's [ALJ's] own motion, a judge [an ALJ] is subject to recusal or disqualification on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.

(c) A party's motion to recuse or disqualify a judge assigned to a case shall be: [If for any reason an ALJ is unable to continue presiding over a pending hearing or issue a proposal for decision after the conclusion of the hearing, the Chief ALJ or the Chief ALJ's designee may modify the assignment for that case, designating a substitute ALJ. The substitute ALJ may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.]

(1) filed at the earliest practicable time;

(2) verified and state with particularity the grounds for the motion; and

(3) made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated on information and belief if the grounds of such belief are specifically stated.

(d) Any other party may file a statement opposing or concurring with a motion to recuse or disqualify.

(e) If for any reason a judge is unable to continue presiding over a pending hearing or issue a proposal for decision after the conclusion of the hearing, the Chief Judge or the Chief Judge's designee may modify the assignment for that case, designating a substitute judge. The substitute judge shall review the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.

§155.19. Computation of Time.

(a) Unless otherwise required by law[statute], in computing time periods prescribed by applicable statute, this chapter, or by judge[ALJ] order, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, [a] Sunday, an official State holiday, or another day on which SOAH [the Office] is closed, in which case the time period will be deemed to end on the next day that SOAH [the Office] is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided by applicable law, [in] this chapter, or judge [ALJ] order. However, if the period specified [to act] is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, except for purposes of §155.25(d)(3) of this title (relating to Service of Documents on Parties).

(b) Disputes regarding computation of time for periods not specified by this chapter or judge [ALJ] order will be resolved by reference to applicable law and upon consideration of agency policy documented in accordance with §155.53[§155.51] of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules).

(c) When by these rules or judge order an act is required or allowed to be done at or within a specified time, the judge may, for cause shown, order the period enlarged if application therefor is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified period, the judge may permit the act to be done after the expiration of the specified period.

§155.21. Representation of Parties.

(a) (No change).

(b) A party's authorized representative shall enter an [his or her] appearance with SOAH [the Office]. If the party's representative is not licensed to practice law in Texas, and the authority of the representative to appear is challenged, the representative must state legal authority to appear as the party's representative.

(c) On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleading for a party shall be the attorney in charge for that party, unless another attorney is specifically designated. The designation of attorney in charge shall be changed only by written notice to SOAH and all parties. Unless otherwise ordered by the judge, all communications sent by SOAH or other parties regarding the matter shall be sent to the attorney in charge. [A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and an ALJ order approving the request.]

(d) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and an order of the judge approving the request.

§155.23. Filing Documents or Serving Documents on the Judge[ALJ].

The following requirements govern the filing or service on the judge[ALJ] of documents in contested cases pending before SOAH[the Office] unless modified by order of the judge[ALJ].

(1) Place for Filing Original Materials.

(A) Contested Cases Generally. The original of all pleadings and other documents requesting action or relief in a contested case, except contested cases referred to SOAH [the Office] by the PUC and the TNRCC, shall be filed with SOAH [the Office] once it acquires jurisdiction under §155.7 of this title (relating to Jurisdiction). Filings and service to SOAH [the office] shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P. O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH [the Office]. Unless otherwise ordered by the judge [ALJ], only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the referring agency, and a copy shall be filed with SOAH [the Office].

(B) Cases Referred by the PUC.

(i) Except for exhibits offered at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to SOAH [~~the Office~~] by the PUC shall be filed with the clerk at the PUC in accordance with the rules of the PUC.

(ii) (No change).

(iii) The party filing a document with the clerk at the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve a copy of the document on the judge [~~ALJ~~] by delivery on the same day as the filing.

(iv) The court reporter shall serve the transcript and exhibits in a proceeding on the judge [~~ALJ~~] at the time the transcript is provided to the requesting party. SOAH [~~The Office~~] shall maintain the transcript and exhibits until they are released to the PUC by the judge [~~ALJ~~]. If no court reporter is requested by a party, SOAH [~~the Office~~] shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge [~~ALJ~~].

(C) Cases Referred by the TNRCC.

(i) Except for exhibits offered at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to SOAH [~~the Office~~] by the TNRCC shall be filed with the chief clerk at the TNRCC in accordance with the rules of the TNRCC.

(ii) (No change).

(iii) The party filing a document with the chief clerk at the TNRCC (except documents provided in the discovery process which are not the subject of motions filed in a discovery dispute) shall serve a copy of the document on the judge [~~ALJ~~] by delivery on the same day as the filing.

(iv) The transcript and exhibits in a proceeding shall be served on the judge [~~ALJ~~] at the time the transcript is provided to the requesting party. SOAH [~~The Office~~] shall maintain the transcript and exhibits until they are released to the TNRCC by the judge [~~ALJ~~]. If no court reporter is requested by a party, SOAH [~~the Office~~] shall maintain the recording of the hearing and the exhibits until they are released to the TNRCC by the judge [~~ALJ~~].

(2) Confidential Materials.

(A) (No change).

(B) Materials Submitted for In Camera Review. A party submitting materials for in camera review by the judge [~~ALJ~~] shall supply them to the judge [~~ALJ~~] in an enclosed, sealed and labeled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed to the judge [~~ALJ~~], shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The container, addressed to the judge [~~ALJ~~], shall identify the docket number, style of the case, and name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged." Said materials will not be received for filing by SOAH [~~the Office~~] unless the judge [~~ALJ~~] so orders. Unless otherwise ordered by the judge [~~ALJ~~], materials reviewed in camera will be returned to the party that submitted them.

(3) Discovery Requests and Documents Produced in Discovery.

(A) Discovery requests and deposition notices to be served on parties and responses and objections to discovery requests shall not be filed with SOAH or served on the judge, except as provided in paragraph (C) of this subsection. [~~Documents produced in discovery shall be served upon the requesting parties and notice of the service shall be given to all parties, but neither the documents produced nor the notice of service shall be filed with the Office or served on the ALJ, except by order of the ALJ. The party responsible for service of the discovery materials shall retain a true and accurate copy of the original documents and become their custodian.~~]

(B) Documents produced in discovery shall be served upon the requesting parties and notice of the service shall be given to all parties, but neither the documents produced nor the notice of service shall be filed with SOAH or served on the judge, except by order of the judge. The party responsible for service of the discovery materials shall retain a true and accurate copy of the original documents and become their custodian. [~~Motions requesting relief in a discovery dispute shall be accompanied by only those portions of discovery materials relevant to the dispute.~~]

(C) Motions requesting relief in a discovery dispute shall be accompanied by only those portions of discovery materials relevant to the dispute. [~~If documents produced in discovery are to be used at hearing or are necessary to a prehearing motion that might result in a final order on any issue, only the portions to be used shall be filed with the Office or offered into evidence.~~]

(D) If documents produced in discovery are to be used at hearing or are necessary to a prehearing motion that might result in a final order on any issue, only the portions to be used shall be filed with SOAH or offered into evidence.

(4) Facsimile Filings. Documents may be filed with SOAH or in PUC or TNRCC cases served on the judge by facsimile transmission according to the following requirements:[~~Time of Filing. Documents may be filed with or served on the Office until 5:30 p.m. local time on business days, unless otherwise ordered by the ALJ.~~]

(A) The quality of the original hard copy shall be clear and dark enough to transmit legibly.

(B) The first sheet of the transmission shall indicate the number of pages being transmitted, and shall contain a telephone number to call if there are problems with the transmission.

(C) Neither the original nor any additional copies of facsimile filings should be filed with SOAH.

(D) The sender shall maintain the original of the document with the original signature affixed.

(E) The date imprinted by SOAH's facsimile machine on the transaction report that accompanies the document will determine the date of filing or of service on the judge. Documents received on a Saturday, Sunday or other day on which SOAH is closed shall be deemed filed the first business day thereafter.

(5) Effect of Signing Pleadings. The signatures of attorneys or parties constitute their certification that they have read the pleading and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the pleading is neither groundless nor brought in bad faith. [~~Facsimile Filings. Documents containing 20 or fewer pages, including exhibits, may be filed with the Office, or in PUC or TNRCC cases served on the ALJ, by facsimile transmission according to the following requirements.~~]

~~[(A) The quality of the original hard copy shall be clear and dark enough to transmit legibly.]~~

[(B) The first sheet of the transmission shall indicate the number of pages being transmitted, and shall contain a telephone number to call if there are problems with the transmission.]

[(C) Neither the original nor any additional copies of facsimile filings should be filed with the Office.]

[(D) The sender shall maintain the original of the document with the original signature affixed.]

[(E) The date and time imprinted by the Office's facsimile machine on the transaction report that accompanies the document will determine the date and time of filing or of service on the ALJ. Documents received after 5:30 p.m. local time shall be deemed filed the first day following that is not a Saturday, Sunday or other day on which the Office is closed.]

§155.25. Service of Documents on Parties.

(a) Service on all parties. Any person filing a document with SOAH[the Office] in a case shall, on the same date as the document is filed, provide a copy to each party or the party's authorized representative by hand-delivery; by regular, certified or registered mail; by electronic mail, upon agreement of the parties; or by facsimile transmission; provided however, when a party files a business record affidavit, pursuant to Texas Rules of [Civil] Evidence (TRE)[(TRCE)] 902(10), or a transcript, the party may give notice of the filing without the necessity of providing a copy to each party. By order, the judge[ALJ] may exempt a party from serving other documents upon all parties.

(b) Certificate of service. The person filing the document shall include a certificate of service that certifies compliance with this section. If a filing does not contain a certificate of service or otherwise show service on all other parties, and on the judge[ALJ] if applicable, SOAH[the Office] may:

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

(c) (No change).

(d) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party in person or by agent, the judge[ALJ] shall presume that the document was received on the date of filing at SOAH.

(2) If a document was served by courier-receipted delivery, the judge[ALJ] shall presume that the document was received no later than the day after filing at SOAH.

(3) If a document was sent by regular mail, certified mail, or registered mail, the judge[ALJ] shall presume that it was received no later than three[five] days after mailing.

[(4) If a document was served by facsimile transmission or by electronic mail, if parties have so agreed, before 5:30 p.m. on a business day, the ALJ shall presume that the document was received on that day; otherwise, the ALJ shall presume that the document was received on the next business day.]

(e) Electronically transmitted documents. Documents[By agreement of the parties, documents] may be served on parties by electronic mail according to the following requirements:[.]

(1) With the exception of documents produced pursuant to a discovery request, the sender shall also file the original of the document with SOAH[the Office].

(2) (No change).

§155.27. Notice of Hearing.

(a) Unless applicable law provides otherwise, an agency referring a contested case to SOAH[the Office] shall provide notice to all parties in accordance with APA §2001.052 and shall include a specific citation to this Chapter 155.

(b) A judge[An ALJ] may issue orders regarding the date, time, and place for hearings, and orders affecting the scope of the proceeding.

§155.29. Pleadings.

(a) Content generally. All requests for relief in a contested case not made on the record at a prehearing conference or hearing shall be typewritten or printed on paper 8 1/2 inches wide and 11 inches long, and timely filed at SOAH[the Office]. Photocopies are acceptable, provided all copies are clear and legible. All pleadings shall contain or be accompanied by the following:

(1) (No change).

(2) The docket number assigned to the case by SOAH[the Office];

(3) - (6) (No change).

(7) A certificate of service, as required by §155.25(b) of this title (related to Service of Documents on Parties[§155.23 of this title (related to Filing Documents or Serving Documents on the ALJ)];

(8) - (9) (No change).

(10) The signature of the submitting party or the party's authorized representative. [supporting affidavits or other proof, when the party filing the request has asserted "good cause" in the request; and]

[(11) The signature of the submitting party or the party's authorized representative.]

(b) Purpose and effect of motions. To change a setting or obtain a ruling, order, or any other procedural relief from the judge[ALJ], a party is required to file a motion. Where the provisions of statute or rule do not automatically establish a needed procedure, the party seeking to amend or supplement the procedure should file a written motion. The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order, or any setting by SOAH[the Office] or thejudge[ALJ].

(c) General requirements for motions. Except as provided in this section or chapter,[for motions seeking to intervene or be granted party status, to amend a party's pleadings, or to continue a scheduled conference or hearing,] all motions shall:

(1) be filed no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge[ALJ] may consider a motion filed after that time or presented orally at a hearing; and,

(2) indicate that the movant has contacted all parties and state whether there is opposition to the requested relief, or describe in detail the movant's attempts to contact the other parties.[if seeking an extension of an established deadline,]

[(A) include a proposed date; and]

[(B) indicate that the movant has contacted all parties and state whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other parties.]

(d) Responses to motions generally. Except as provided in this section[subsection] or chapter, responses to motions [described in subsection (c) of this section] shall be in writing, and filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing. Responses[~~However, responses~~] to written motions late-filed (for good cause shown) on the date of the hearing may be presented orally at hearing.

(e) Motions to intervene. Motions for party status shall be filed no later than twenty[~~20~~] days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on or otherwise received by other parties.

(f) Motions for continuance or extension of time. Motions for continuance or for extension of time shall:

(1) make specific reference to all other motions for continuance or for extension of time previously filed in the case by the movant, and shall set forth the specific grounds upon which the party seeks the continuance or extension of time;

(2) be filed no later than five days before the date of the hearingor deadline the movant seeks to extend, except, for good cause demonstrated in the motion, the judge[~~ALJ~~] may consider a motion filed after that time or presented orally at the hearing;

(3) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and [~~indicate that the movant has contacted all parties and state whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other parties;~~]

(4) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with SOAH, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable. [~~if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and~~]

[~~(5) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with the Office, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable.~~]

(g) Responses to written motions for continuance or extension of time. Responses to written motions for continuance or for extension of time shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

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

(h) Amendment of pleadings. A party may amend its pleadings by written filing at such time as not to operate as a surprise to other parties; provided that any pleading which substantially affects the scope of the hearing may not be filed later than seven days before the date the hearing actually commences, except by agreement of all parties and consent of the judge[~~ALJ~~].

(i) Motions for summary disposition and responses thereto shall be governed by §155.57 of this title (relating to Summary Disposition).

§155.31. Discovery.

(a) In contested cases, parties shall have the discovery rights provided in the APA, the referring agency's statute, and these rules. For cases not adjudicated under the APA, discovery shall be allowed as ordered by the judge[~~ALJ~~].

(b) Parties may obtain discovery regarding any matter not privileged or exempted by the Texas Rules of Civil Procedure (Tex. R. Civ. P.)[~~TRCP~~], the Texas Rules of Evidence (Tex. R. Evid.)[~~TRCE~~], or other rule or law, that is relevant to the subject matter of the proceeding.

(c) Discovery may commence when SOAH[~~the Office~~] acquires jurisdiction under §155.7 of this title (relating to Jurisdiction). No discovery may be sought after the commencement of the contested case hearing on the merits unless permitted by the judge[~~ALJ~~] upon a showing of good cause.

(d) Parties may obtain discovery by: requests for disclosure, as described by Tex. R. Civ. P. 194; oral or written depositions; written interrogatories to a party; requests of a party for admission of facts and the genuineness or identity of documents or things; requests and motions for production, examination, and copying of documents and other tangible materials; motions for mental or physical examinations; and requests and motions for entry upon and examination of real property.

(1) Unless the judge[~~ALJ~~] directs otherwise, each party may serve no more than two sets of interrogatories to any other party and the number of questions, including subsections, in a set of interrogatories shall be limited so as not to require more than thirty[~~30~~] answers.

(2) A party may serve upon any other party, no later than twenty days before the end of the discovery period or the date of hearing if no discovery period has been established, a written request for the admission of the truth of any matters within the scope of subsection (b) of this section that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or are made available for inspection and copying. Service shall be in accordance with §155.25 of this title (relating to Service of Documents on Parties).

(A) Each matter of which an admission is requested shall be separately set forth. The matter is admitted without necessity of an [~~ALJ~~] order of the judge unless the party to whom the request is directed timely serves upon the party requesting the admission a written answer or objection addressed to the request, signed by the party or the party's attorney. If objection is made, the reason for the objection shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer and deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or easily obtainable by it is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for hearing may not, on that ground alone, object to the request; it may, subject to the provisions of Tex. Gov't Code Ann. §2003.0421[~~of the Texas Government Code~~], deny the matter or set forth reasons why the party cannot admit or deny it.

(B) Any matter admitted under this section is conclusively established as to the party making the admission unless the judge[~~ALJ~~] on motion permits withdrawal or amendment of the admission. Subject to the duty to supplement discovery under this section, the judge[~~ALJ~~] may permit withdrawal or amendment of

responses and deemed admissions upon a showing of good cause for such withdrawal or amendment or in the interest of justice, if the judge[~~ALJ~~] finds that the parties relying upon the responses and deemed admissions would not be unduly prejudiced and that the presentation of the merits of the action will be subserved thereby. Any admission made by a party under this section is for the purpose of the pending action only and neither constitutes an admission by the party for any other purpose nor may be used against the party in any other proceeding.

(e) Requests for issuance of subpoenas or commissions shall be directed to the referring agency. Any such requests shall comply with the APA and the applicable agency procedure, if any, regarding issuance of subpoenas or commissions. Disputes over whether a request complies with applicable law shall be resolved by the judge.

(f) Written interrogatories, requests for admission, requests and motions for production, and requests for entry upon and examination of real property shall initially be directed to the party from which discovery is being sought. Copies of discovery requests and answers to those requests shall not be filed with SOAH[~~the Office~~] unless directed by the judge[~~ALJ~~] or when in support of a motion to compel, motion for protective order, or motion to quash.

(g) The judge[~~ALJ~~] may establish deadlines as necessary for discovery requests and responses. If the judge[~~ALJ~~] does not establish a deadline, responses to discovery requests, except for notices of depositions, shall be made within twenty days after receipt. Except where specifically prohibited, the procedures and limitations set forth in these rules pertaining to discovery may be modified by agreement of the parties[~~. Parties may extend response deadlines~~] in accordance with §155.39 of this title (relating to Stipulations); or by [~~motion submitted to~~] the judge on the motion of a party,[~~ALJ~~] if the parties are unable to agree; or on the judge's own initiative if the interest of justice requires. If such motion is timely filed by a party, it shall be captioned "Request for Discovery Control Plan" and may include a request for:[~~may be granted for good cause shown.~~]

(1) the setting of a date for the hearing on the merits;

(2) dates for prehearing conferences;

(3) the establishment of a time period for the completion of all discovery or an appropriate phase of it;

(4) the establishment of limits on the amount or forms of discovery permitted;

(5) a schedule for completion of prehearing procedures; and

(6) any other matter that will promote the efficient and just disposition of the matter.

(h) A responding party is under a continuing duty to reasonably supplement its discovery responses under the circumstances specified in [~~Rule 166b(6) of~~] the Texas Rules of Civil Procedure. An amended or supplemental response must be made reasonably promptly after the party discovers the necessity for such a response. It is presumed that an amended or supplemental response made less than fifteen days before the hearing was not made promptly. Where such a presumption arises, or pursuant to order issued by the judge, the supplementing party shall provide an affidavit identifying the date and the manner in which the party learned of the need to supplement its answer and such additional facts necessary to meet a contention that the need to supplement reasonably should have been discovered earlier.

(i) (No change).

(j) The objections shall be a separate written pleading filed within the time for response. The discovery request to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately stated for each question. If an objection pertains to only part of a question, that part shall be clearly identified. All arguments upon which the objecting party relies shall be presented in full in the objection. A party must comply with as much of the request to which the party has no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. An objection that is not made in the time required, that is obscured by numerous unfounded objections, or otherwise fails to comply with the requirements of this subsection is waived unless the judge excuses the waiver for good cause shown.

(k) An[~~If an~~] objection [~~is~~] founded upon a claim of privilege or exemption shall be governed by the procedures set forth in Tex. R. Civ. P. 193.3 and 193.4.[~~under TRCP 166b(3), the ALJ may require the objecting party to provide an index that lists, for each document claimed privileged or exempt from discovery: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the claimed privilege(s) or exemption(s). A full and complete explanation of the claimed privilege or exemption shall be provided. The index and explanations may be public documents if so determined by the ALJ after review of the index and accompanying explanations. The documents claimed to be privileged or exempted from discovery shall be provided to the ALJ in camera by the deadline established by the ALJ.~~]

(l) Every disclosure, discovery request, notice, response, and objection must be signed by the party's authorized representative or the party, if the party is not represented. The signature of the party or the party's authorized representative shall have the effect specified by the Texas Rules of Civil Procedure. [~~The party seeking discovery shall file a motion to compel within ten days of receipt of the pertinent objection or alleged failure to comply with discovery. Absence of a motion to compel filed by the party seeking discovery will be construed as an indication that the parties have resolved their discovery dispute. All motions to compel shall include a certificate of conference:~~]

[~~(1) averring the parties conferred, negotiated in good faith, and were unable to resolve the dispute prior to submitting the dispute to the ALJ for resolution; or~~]

[~~(2) averring the movant has made reasonable, but unsuccessful, attempts to contact opposing counsel and succinctly describing the attempts made.~~]

(m) The party seeking discovery shall file a motion to compel within ten days of receipt of the pertinent objection or alleged failure to comply with discovery. Absence of a motion to compel filed by the party seeking discovery will be construed as an indication that the parties have resolved their discovery dispute. The parties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. Therefore, all discovery motions shall include a certificate of conference:[~~ALJ may issue any order in the interest of justice necessary to protect the person or party seeking relief from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Any person or party from whom discovery is sought may file a motion for a protective order, specifying the grounds for the protective order. Motions and responses may include affidavits, discovery pleadings, or other pertinent documents. The ALJ's authority as to such orders extends to, but is not limited by, any of the following:~~]

(1) averring the parties conferred, negotiated in good faith, and were unable to resolve the dispute prior to submitting the dispute

to the judge for resolution; or[~~ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;~~]

(2) averring the movant has made reasonable, but unsuccessful, attempts to contact opposing counsel and succinctly describing the attempts made.[~~ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the ALJ; or~~]

[~~(3) ordering that for good cause shown, results of discovery be sealed or otherwise adequately protected, that their distribution be limited, or that their disclosure be restricted. Any order under this paragraph shall be made in accordance with the APA, the referring agency's statute, and other applicable rule or law.~~]

(n) The judge may issue any order in the interest of justice necessary to protect the person or party seeking relief from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Any person or party from whom discovery is sought may file a motion within the time permitted for response to the discovery request for a protective order, specifying the grounds for the protective order. A person should not move for protection when objection or assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. Motions and responses may include affidavits, discovery pleadings, or other pertinent documents. The judge's authority as to such orders extends to, but is not limited by, any of the following:[~~An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript. Unless the ALJ orders otherwise, the parties may, by written agreement:~~]

(1) ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;[~~provide that depositions be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and~~]

(2) ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the judge; or[~~modify the procedures provided by these rules for other methods of discovery.~~]

(3) ordering that for good cause shown, results of discovery be sealed or otherwise adequately protected, that their distribution be limited, or that their disclosure be restricted. Any order under this paragraph shall be made in accordance with the APA, the referring agency's statute, and other applicable rule or law.

(o) An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript. Unless the judge orders otherwise, the parties may, by written agreement:

(1) provide that depositions be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(2) modify the procedures provided by these rules for other methods of discovery.

§155.33. Orders.

(a) The judge[~~ALJ~~] has broad authority to issue orders to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing or posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case.

(b) (No change).

(c) The judge[~~ALJ~~] may order the consolidation of dockets or joint hearing on dockets if there are common issues of law or fact, and consolidation or joint hearing will aid the fair and efficient handling of contested matters. The judge[~~ALJ~~] may order severance of issues if separate hearings on such issues will aid the fair and efficient handling of contested matters.

(d) The judge[~~ALJ~~] may order referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by the Governmental Dispute Resolution Act, [~~75th Legislature, Chapter 934, §1, 1997, Texas General Laws 2932 (to be codified at~~] Tex. Gov't Code Ann.[~~Texas Government Code~~], Chapter 2009[~~2008)~~], and the statute creating SOAH[~~the Office~~], Tex. Gov't Code Ann.[~~Texas Government Code~~], Chapter 2003.

(e) Where authorized by law, the judge[~~ALJ~~] may issue a final order resolving the contested issues in a case and ruling on all requests for relief.

§155.35. Certification of Questions to Referring Agency.

(a) Certified Questions In Cases Referred by the PUC. The judge[~~ALJ~~] may certify to the PUC an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.

(1) (No change).

(2) Procedure for Certification. The judge[~~ALJ~~] shall submit the certified issue to the Chief of the Office of Policy Development. The secretary shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than twenty days after its submission. Parties may file briefs on the certified issue within thirteen days of its submission. The judge[~~ALJ~~] may abate the proceeding while a certified issue is pending.

(3) (No change).

(b) Certified Questions In Cases Referred by the TNRCC. On a motion by a party served on the judge[~~ALJ~~] or on the judge's[~~ALJ's~~] own motion, the judge[~~ALJ~~] may certify a question to the TNRCC at any time during a proceeding.

(1) Issues Eligible for Certification. Issues regarding commission policy, jurisdiction, or the imposition of any sanction by the judge[~~ALJ~~] that would substantially impair a party's ability to present the case are appropriate for certification. Policy questions, for certification purposes, include, but are not limited to:

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

(2) Procedure for Certification. The certified question shall be filed with the chief clerk. Within five days after the certified question is filed, parties to the proceeding may file briefs or replies. The chief clerk shall provide copies of the certified question and any briefs or replies to the general counsel and commissioners.

(A) Upon the request of the general counsel or one or more commissioners to the general counsel, the certified question will be scheduled for consideration during a commissioners' meeting. The chief clerk shall give the judge[~~ALJ~~] notice of the request. The judge[~~ALJ~~] may, in his or her discretion, abate the hearing until the commission answers the certified question, or continue with the hearing if the judge[~~ALJ~~] determines that no party will be substantially harmed by proceeding while awaiting a response.

(B) If no request to set the question for consideration is received from the general counsel by the chief clerk within fifteen[~~15~~] days after filing, the commission's decision is that it does not wish to consider the question.

§155.37. Settlement Conferences.

(a) On party request or in the judge's[~~ALJ's~~] discretion, the judge[~~ALJ~~] may order that a mediated settlement conference (MSC) be held.

(1) Parties may object to the proposed ADR process by written response in the same manner as to other motions, (*See* §155.29 of this title (relating to Pleadings), specifically subsection (d) of that section (relating to Responses to motions generally). A party may also request review of the case by SOAH's[~~the Office's~~] Alternative Dispute Resolution (ADR) Team Leader[~~Coordinator~~] or the Team Leader's[~~Coordinator's~~] designee (including *ex parte* consultation with each party in confidence). The Team Leader [~~Coordinator~~] or designee will make a written recommendation to the judge[~~ALJ~~], which shall also be served on all parties, about whether the case is appropriate for ADR.

(2) If the request is granted and the parties do not request that a non-SOAH judge[~~ALJ~~] be appointed as mediator, the judge[~~ALJ~~] will refer the case to SOAH's[~~the Office's~~] ADR Team Leader[~~Coordinator~~].

(A) SOAH[~~The Office~~], through the ADR Team Leader[~~Coordinator~~], will assign a qualified judge[~~ALJ~~] to serve as mediator. If either party objects promptly and with good cause to the mediator appointed, SOAH[~~the Office~~] will appoint another qualified judge[~~ALJ~~] to serve as mediator.

(B) Parties may agree to retain and pay a private mediator who is qualified according to Texas Civil Practices & Remedies Code (Tex. Civ. Prac. & Rem. Code Ann.) Chapter 154 [~~of the Texas Civil Practices & Remedies Code~~] to serve as mediator. The judge[~~ALJ~~] may limit the length of time available to parties to pursue this option.

(i) The parties shall notify the judge[~~ALJ, by written motion,~~] of their agreement to retain a private mediator. That notice must include: the name, address, and telephone number of the mediator selected, a statement that the parties have entered into an agreement with the mediator as to the rate and method of his or her compensation, and an affirmation that the mediator is qualified to serve according to Tex. Civ. Prac. & Rem Code[~~Texas Civil Practices & Remedies Code~~], Chapter 154.

(ii) Upon notice from the parties that they have agreed to retain a particular private mediator, the judge[~~ALJ~~] will enter an order specifying the date by which the mediation must be completed[~~recessing the adjudicatory proceeding for an adequate time to allow the mediation process~~].

(3) In TNRCC cases, when all the parties agree or the judge[~~ALJ~~] finds that ADR would be appropriate pursuant to the interagency contract between TNRCC and SOAH, the case will be sent to TNRCC's ADR Director for disposition in accordance with that agency's rules in 30 Texas Administrative Code (Tex. Admin. Code), Chapter 40.

(4) - (5) (No change).

(6) The mediator will not communicate with the presiding judge[~~ALJ~~] in the case except to report in writing whether the parties attended the MSC, whether the matter settled, and[~~or~~] to report any other stipulations or matters that the parties agree be reported. The mediator will not serve as presiding judge[~~ALJ~~] in the case.

(7) A mediator has no authority to issue orders in a case referred for mediation. Deadlines in the underlying case may be extended only by order of the presiding judge[~~ALJ~~]. An MSC is not intended to delay the contested case process.

(b) Settlement discussions off the record are subject to the provisions of Tex. R. Evid. [~~TRCE~~] 408.

(c) This section is not in derogation of the parties' ability to settle cases independently of SOAH[~~the Office~~], or to discuss settlement in a prehearing conference set by the judge[~~ALJ~~] under the authority of §155.33 of this title (relating to Orders).

§155.39. Stipulations.

(a) Subject[~~The parties may stipulate to any factual matters and, subject~~] to the judge's[~~ALJ's~~] approval, the parties may stipulate to any factual, legal, or[~~agree to any~~] procedural matters.

(b) Any agreements as to procedural matters that would modify a schedule or procedure previously ordered by the judge[~~ALJ~~] must be stated in a written motion submitted promptly after the agreement is reached.

(c) A stipulation may be filed in writing or entered on the record at the hearing or a prehearing conference. The judge[~~ALJ~~] may require additional development of stipulated matters.

(d) Unless otherwise provided in this section or Chapter, no agreement between attorneys or parties regarding a contested case pending before SOAH will be enforced unless it is in writing, signed, and filed with SOAH, or unless it is entered on the record at the hearing or a prehearing conference.

§155.41. Procedure at Hearing.

(a) The judge[~~ALJ~~] shall exercise reasonable control over the mode and order of presenting preliminary matters, pending motions, opening statements, witness testimony and other evidence, oral or written closing argument, and other processes in the hearing.

(b) Normally, the party with the burden of proof will present evidence first. If the burden is not ascertainable after reference to statute or consideration of referring agency policy adequately documented in the record in accordance with §155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules), the judge[~~ALJ~~] will place the burden of proof on a specific party or parties, considering such factors as the status of the parties (*e.g.*, movant, applicant, appellant, respondent, protestant, intervenor[~~intervener~~]); parties' relative access to and control over information pertinent to the merits of the case; and whether a party would be required to prove a negative.

§155.43. Making a Record of Contested Case.

(a) A record of all contested case proceedings will be made. At the judge's[~~ALJ's~~] discretion and order, the making of a record of a prehearing conference may be waived, and the actions taken at the conference may instead be reflected in a written order issued after the conference. For any proceeding in a docket set to last no longer than one day, SOAH[~~the Office~~] is responsible for making a tape recording of the hearing or prehearing conference.

(1) A referring agency that prefers to arrange for a stenographic recording of all docketed proceedings on a regular basis may do so by filing a statement of intent to do so. The statement shall be filed with the Director of [~~Docketing and the Director of the Central~~] Hearings [~~Panel Division~~] and shall remain in effect for all proceedings conducted by SOAH[~~the Office~~] on behalf of the referring agency unless the statement is revoked in writing. The referring agency shall make arrangements for stenographic recording of all proceedings while

the statement is effective, unless the judge[~~ALJ~~] waives the requirement for a prehearing conference or as provided in subsection (b) of this section.

(2) (No change).

(b) The referring agency shall provide a court reporter for[~~For~~] any proceeding in a docket set to last longer than one day [~~, the referring agency shall arrange for a court reporter to be present, unless the referring agency files notice by the time specified under §155.29(c) of this title (relating to General requirements for motions) for motions that it prefers another means of making the official records and specifies the means desired~~]. The court reporter shall prepare a stenographic record of the proceeding but shall not prepare a transcript unless a party or the judge[~~ALJ~~] so requests.

(c) The tape recording made by SOAH[~~the Office~~] under subsection (a) of this section, the videotape made by the referring agency under subsection (a) of this section if a statement is on file, or the stenographic recording prepared under subsection (b) of this section is the official record of the proceeding for purposes of all actions within SOAH's jurisdiction. The judge[~~ALJ~~] may order a different means of making a record if circumstances so require and may designate that record as the official record of the proceeding.

(d) Any party may use a means of making an unofficial record of the proceeding that is in addition to the means specified in the rules or by the judge[~~ALJ~~].

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

(3) The judge[~~ALJ~~] may order that the additional means not be used or that it cease being used if it may cause or is causing disruption to the proceeding.

(4) At the proceeding the judge[~~ALJ~~] may order that the additional means sought to be used shall be the method of preparing the official record of the proceeding and dispense with any other means required by this section, unless there is a timely objection at the beginning of the proceeding.

(e) On the written request to the referring agency by a party to a contested case or on request of the judge[~~ALJ~~], a written transcript of all or part of the proceedings shall be prepared by a court reporter from the means used to make the official record of the proceeding. If the proceeding has been taped or video recorded, the referring agency shall inform SOAH[~~the Office~~] of the need to deliver the original recording to a court reporter, selected by the referring agency, for preparation of the transcript.

(1) Costs of a transcript ordered by any party or the judge shall be paid by the referring agency. If permitted by the referring agency's statute, rules, or policy, the cost of the transcript may be assessed to one or more parties.[~~The referring agency may pay the cost of the transcript requested by any party or the ALJ, or it may assess the cost to one or more parties in accordance with the referring agency's statute, rules, or policy.~~] This section does not preclude the parties from agreeing to share the costs associated with the preparations of a transcript.

(2) The original of any transcript prepared shall be filed with SOAH[~~the Office~~].

(3) Proposed written corrections of purported errors in a transcript shall be filed with SOAH and served on the parties and the court reporter within a reasonable time after discovery of the error. The judge may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the judge. [~~When no party requests a transcript but the ALJ requests a court reporter to prepare a transcript, the cost shall be handled according to the interagency contract between the Office and the referring agency. If no interagency contract provisions for court reporting expense exist, the Office shall bear the cost of any transcript requested by the ALJ unless the referring agency agrees to pay the cost or assesses the cost as provided for in paragraph (1) of this subsection.~~]

(4) A transcript prepared according to these procedures becomes the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.[~~Proposed written corrections of purported errors in a transcript shall be filed with the Office and served on the parties and the court reporter within a reasonable time after discovery of the error. The ALJ may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the ALJ.~~]

[~~(5) A transcript prepared according to these procedures becomes the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.~~]

(f) The judge[~~ALJ~~] shall maintain any exhibits admitted during the proceeding and the official record of the proceeding, other than a stenographic record. However, the judge[~~ALJ~~] may allow the court reporter to retain the exhibits and the tape or video recording of the proceeding, if applicable, while a transcript is being prepared. The exhibits and transcript or recording will be sent to the referring agency after issuance of the order or proposal for decisions and consideration of any exceptions to the proposal for decision and replies. The judge[~~ALJ~~] may retain the exhibits and transcript or recording to prepare for presentation of the proposal for decision to the referring agency, if a presentation is requested by the referring agency, or SOAH[~~the Office~~] may seek temporary return of the exhibits and transcript or recording to enable the judge[~~ALJ~~] to prepare for that presentation if the materials have already been sent to the referring agency.

(g) (No change).

(h) A judge may permit broadcasting or televising of proceedings, if existing technology allows, upon the judge's determination that doing so serves the public interest in accessibility to the proceedings, and provided that doing so will not unduly interfere with the efficiency of the proceedings, distract the participants, or impair the dignity of the proceedings.

§155.47. Public Attendance and Comment at Hearing.

(a) Unless otherwise required by law, all proceedings before SOAH[~~the Office~~] are open to the public.

(b) The judge[~~ALJ~~] retains the authority to remove persons whose conduct impedes the orderly progress of the hearing, and to take necessary steps to limit attendance due to any physical limitations of the hearing facility.

(c) When required by statute (*See*, for example in Texas Alcoholic Beverage Code (Tex. Alco. Bev. Code Ann.), §5.435) members of the public shall be allowed to make public comment addressing matters pertinent to the issues in the case. Unless otherwise provided by law, public comment is not part of the evidentiary record of the case unless sworn, subject to cross-examination, offered by a party in accordance with the judge's[~~ALJ's~~] orders, and received in accordance with the Texas Rules of Evidence[~~TRCE~~] as made applicable by the APA.

§155.49. Conduct and Decorum.

(a) Parties, representatives, and other participants shall conduct themselves with dignity, shall show courtesy and respect for one another and for the judge[~~ALJ~~], shall follow any additional guidelines of decorum prescribed by the judge[~~ALJ~~] in the proceeding, and shall adhere to the times scheduled for beginning the proceeding, and to the

times established for each period of recess, and for ending the proceeding. Attorneys should[~~shall~~] adhere to the standards of conduct in the Texas Lawyers' Creed promulgated by the Texas Supreme Court.

(b) To maintain and enforce proper conduct and decorum, and to assure promptness at a proceeding, the judge[~~ALJ~~] may take appropriate action, including but not limited to:

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

§155.51. Evidence.

(a) APA. Consistent with the APA, the rules of evidence as applied in a non-jury civil case in district court govern contested case hearings conducted by SOAH[~~the Office~~], except that evidence inadmissible under those rules may be admitted if it meets the standards set out in APA §2001.081.

(b) Exclusion of witnesses. At the request of a party, or on the judge's[~~ALJ's~~] own motion, the judge[~~ALJ~~] shall order witnesses excluded from the hearing room so they cannot hear the testimony of other witnesses, instructing them not to converse about the case with each other or any person other than the attorneys in the proceeding, except by permission of the judge, and not to read any report of, or comment upon, the testimony in the case while under order of this subsection. This does not authorize exclusion of a party who is a natural person or the spouse of such natural person, or an officer or employee of a party that is not a natural person designated as its representative by the party, or a person whose presence is shown by a party to be essential to the presentation of its case.

(c) Prefiled testimony. The judge[~~ALJ~~] may require that exhibits and testimony of witnesses to be called at hearing, and objections thereto, be reduced to written form, filed at SOAH[~~the Office~~] prior to hearing, and served on other parties, if the hearing will be expedited and the interests of the parties will not be substantially prejudiced.

(d) Exhibits.

(1) Exhibits offered into evidence may not be of such a size or nature that they unduly encumber the records of SOAH[~~the Office~~]. Physical evidence that is bulky, dangerous, perishable, or otherwise not suitable for inclusion in agency records shall not be offered into the record; instead, proponents shall make reasonable efforts to use photographs, recordings, or other mechanical or electronic means to substitute for physical evidence that would encumber SOAH's[~~the Office's~~] records.

(2) Documents offered into evidence shall be legible, and shall not exceed 8 1/2 inches by 11 inches unless good cause is shown why they could not be reduced. Any document in excess of fifty[~~50~~] pages shall be accompanied by a table of contents or index. Maps, drawings, blueprints, and other documents not reasonably susceptible to reduction shall be rolled or folded so as not to encumber the record. The judge[~~ALJ~~] may exclude exhibits not conforming to this subsection.

(3) Each exhibit to be offered shall first be tendered for numbering by the judge[~~ALJ~~] or court reporter. Copies of the original exhibit shall be furnished by the party offering the exhibit to the presiding judge[~~ALJ~~] and to each party present at the hearing, unless otherwise ordered by the judge[~~ALJ~~].

(4) An exhibit excluded from evidence will be considered withdrawn by the offering party, and will be returned to the party, unless the party makes an offer of proof in accordance with the Texas Rules of Evidence[~~TRCE~~].

§155.53. Consideration of Policy Not Incorporated in Referring Agency's Rules.

(a) (No change).

(b) In resolving contested issues in the case, the judge[~~ALJ~~] shall consider any applicable agency policy not incorporated in the agency's rules which is supported by the evidence. The judge's[~~ALJ's~~] decision or recommendation on whether to apply an agency's policy will depend upon the nature and context of the policy and any request to apply it, and such other factors as:

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

(3) the stability and duration of the policy, as illustrated by the type of process that led to its adoption (including whether it was published in the *Texas Register*), the frequency and consistency with which it has been applied previously, and the level of formality of the process required for the agency to amend it;

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

§155.55. Failure to Attend Hearing and Default.

(a) If [~~,after receiving notice of a hearing,~~] a party who does not have the burden of proof fails to appear [~~in person or by representative~~] on the day and time set for hearing [~~or fails to appear by telephone in accordance with this chapter~~], the judge[~~ALJ~~] may proceed in that party's absence on a default basis and issue a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted [~~and, as authorized by applicable law, may enter a default judgment against the defaulting party~~].

(b) Any default proceeding under this section requires adequate proof of the following:[~~For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.~~]

(1) proper notice under Tex. Gov't Code Ann., Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was provided to the defaulting party; and

(2) such notice included disclosure, in at least twelve point, bold-face type, that upon failure of the party to appear at the hearing, the factual allegations in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default.

(c) This subsection applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the referring agency's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. Under that situation, the default procedures described in subsection (b) of this section may be used only when the following circumstances are shown to exist:[~~Any default judgment entered under this section shall be issued only upon adequate proof that proper notice under Texas Government Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was provided to the defaulting party, and such notice includes disclosure, in 10-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.~~]

(1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and

(2) there is credible evidence that the notice of hearing was sent by first class mail to the defaulting party's last known address as shown on the referring agency's records.

(d) No later than ten days after the date of the hearing, if a proposal for decision or an order deciding the case has not been issued,

a party may file a motion to set aside a default and reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.[This subsection applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the referring agency's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. Under that situation, the default procedures describe in subsection (c) of this section may be used only when the following circumstances are shown to exist:]

[(1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and]

[(2) there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address as shown on the referring agency's records.]

(e) This section does not preclude the referring agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the referring agency's statute or rules. A party may request entry of an order of the judge abating or continuing the proceedings to pursue informal disposition at the referring agency.[When motions for rehearing are permitted by applicable law, such motions requesting the reopening of the record shall be filed with the referring agency and not with the Office, unless otherwise specifically provided by law.]

[(f) This section does not preclude the referring agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the referring agency's statute or rules. A party may request entry of an ALJ order abating or continuing the proceedings to pursue informal disposition at the referring agency.]

§155.57. Summary Disposition and Dismissal.

(a) Summary Disposition. In response to a party's motion or after a judge[an ALJ] notifies the parties of an intent to dispose of a case by summary disposition and allows time for responses, the judge[ALJ] may issue a proposal for decision, or where authorized by law a final order, resolving a contested case without evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that a[the moving] party is entitled to a decision in its favor as a matter of law.

(1) A motion for summary disposition shall state the specific grounds therefor.

(A) A party may move with or without supporting affidavits for summary disposition upon all or any part of a contested case.

(B) The motion shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with the requirement of a separate fact statement may, in the judge's discretion, constitute sufficient grounds for the denial of the motion.

(2) Any opposition to a motion for summary disposition shall be filed within twenty days of receipt of the motion. The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact claimed by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure by the opposing party to comply with the requirement of a separate fact statement may constitute sufficient grounds, in the judge's discretion, for granting the motion.

(3) Discovery products not on file with SOAH may be relied upon to support or oppose a motion for summary disposition, if copies of the products are filed with the motion or opposition and copies of or a notice containing specific references to the discovery products are served on all parties.

(b) Failure to Prosecute. A contested case may be dismissed for want of prosecution, on failure of a party seeking affirmative relief to appear for any hearing or prehearing conference of which the party had notice, or for the party's failure to prosecute the case in accordance with a requirement of statute, rule, or order of the judge. [referred to the Office, or a portion of the case, is subject to dismissal from the Office's docket or a recommendation to the referring agency of dismissal for:]

(1) Notice of the intent to dismiss the case and an opportunity to contest the dismissal will be provided by the judge to the parties.[lack of jurisdiction over the matter by the referring agency;]

(2) A motion to set aside the dismissal for failure to prosecute and to reopen the record shall be filed with the judge within ten days of the issuance of the notice of intent to dismiss the case and shall specify the bases for the motion. The judge may grant the motion, set aside the dismissal, and reopen the hearing for good cause shown.[lack of statute, rule, or contract authorizing the Office to conduct the proceeding;]

[(3) mootness of the case;]

[(4) failure of the moving party to prosecuted the case in accordance with requirement of statute , rule, or ALJ order;]

[(5) failure to state a claim for which relief can be granted; or]

[(6) unnecessary duplication of proceedings.]

(c) Other Dismissal Actions. In response to a party's motion or after a judge notifies the parties of an intent to dismiss a case and allows time for responses, the judge may dismiss a case, or a portion of the case, from SOAH's docket for:[If a moving party withdraws its entire claim or parties settle all matters in controversy, an ALJ may dismiss a matter from the Office's docket by order with or without prejudice. The ALJ may order a withdrawn or settled matter severed before dismissal, if other related matters in the docket remain in controversy.]

(1) lack of jurisdiction over the matter by the referring agency;

(2) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

(3) mootness of the case;

(4) failure to state a claim for which relief can be granted; or

(5) unnecessary duplication of proceedings.

(d) If a moving party withdraws its entire claim or parties settle all matters in controversy, a judge may dismiss a matter from SOAH's docket by order with or without prejudice. The judge may order a withdrawn or settled matter severed before dismissal, if other related matters in the docket remain in controversy.

§155.59. Proposal for Decision.

(a) For contested cases in which the judge[~~ALJ~~] does not have authority to issue a final order, the judge[~~ALJ~~] shall prepare a proposal for decision.

(b) The judge[~~ALJ~~] shall submit the proposal for decision to the final decision maker and furnish a copy to each party.

(c) The parties may submit to the agency that possesses final decision making authority in the case (referring agency) exceptions to the proposal for decision, and replies to exceptions to the proposal for decision. Copies of exceptions and replies shall be served on SOAH.[~~The ALJ may amend the proposal for decision in response to exceptions and replies to exceptions, without the proposal for decision again being served on the parties.~~]

(1) The parties shall direct any requests or motions for extension of time in which to file exceptions or replies to the referring agency.

(2) The judge shall review all exceptions and replies and notify the referring agency that the exceptions and replies have been reviewed and notify the referring agency of any changes to the proposal for decision that the judge recommends.

(d) The judge may amend the proposal for decision in response to exceptions and replies to exceptions, and may also correct any clerical errors in the proposal for decision, without the proposal for decision again being served on the parties.

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 October 3, 2001.

TRD-200105991
Paul Elliott
Director of Hearings
State Office of Administrative Hearings
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For further information, please call: (512) 475-4931

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION

SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §§17.200 - 17.202

The Texas Department of Agriculture (department) proposes new Chapter 17, Subchapter F, §§17.200-17.202, concerning the Texas Wine Marketing Assistance Program. The new sections are proposed to implement House Bill 892, as enacted by the 77th Legislature, 2001, to be codified as new Chapter 110 of the Alcoholic Beverage Code, which establishes a program to assist the Texas wine industry in promoting and marketing Texas wines and educate the public about the Texas wine industry. New §17.200 provides definitions to be used in the Subchapter. New §17.201 sets out the responsibilities of both the department and the Wine Marketing Advisory Committee. New §17.202 provides for package store participation in the Texas Wine Marketing Assistance Program and sets out criteria for determining participation in the program.

Delane Caesar, assistant commissioner for marketing and promotion, has determined for the first five-year period that the proposed sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The Texas Alcoholic Beverage Commission (commission) has been appropriated $250,000 for fiscal year 2001-2002 and $250,000 for fiscal year 2002-2003 for the purpose of transferring those funds to the department to implement the Texas Wine Marketing Assistance Program. No funds have been appropriated for fiscal years beyond fiscal year 2002- 2003. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Caesar has also determined that for the first five years that the proposal is in effect the public benefit resulting from enforcing and administering the sections will be increased awareness of and sales of Texas wine due to the department's promotional and marketing programs. There will be no economic costs to microbusinesses, small businesses, and individuals required to comply with the new sections. It is anticipated that Texas wineries and package stores will benefit economically from the promotional and marketing assistance through increased sales of Texas wines.

Comments may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code §12.0175, which authorizes the department to establish programs to promote and market agricultural products grown or processed in the state or products made from ingredients grow in the state; and House Bill 892, as enacted by the 77th Legislature, 2001, §1.01, new §110.002 of the Texas Alcoholic Beverage Code, which authorizes the department to adopt rules as necessary to implement the Texas Wine Marketing Assistance Program.

The code that will be affected by this proposal are Code Chapter 12 of the Texas Agriculture Code and Code Chapter 110 of the Texas Alcoholic Beverage Code.

§17.200. Definitions.

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

(1) Committee -- Texas Wine Marketing Assistance Program Advisory Committee, as established by the Texas Alcoholic Beverage Code, Chapter 110.

(2) Commissioner -- The Commissioner of Agriculture, Texas Department of Agriculture.

(3) Package store -- An entity that holds a Package Store permit from the Texas Alcoholic Beverage Commission.

(4) Department -- The Texas Department of Agriculture.

(5) Commission -- The Texas Alcoholic Beverage Commission.

(6) Program -- The Texas Wine Marketing Assistance Program.

§17.201. Wine Marketing Assistance Program and Advisory Committee.

(a) The department's responsibilities under this subchapter are as follows.

(1) The department's Marketing and Promotion Division shall administer the Texas Wine Marketing Assistance Program.

(2) The department shall administer and implement the program as follows:

(A) organize a network of package stores to participate in the program;

(B) operate a toll-free telephone number to receive program inquiries and information requests, and assist interested persons in locating specific Texas wineries;

(C) use market research to develop a wine industry marketing plan;

(D) educate the public about Texas wines by publicizing the department's database and by making information available to the public through the department's toll-free number and the Internet;

(E) promote Texas wineries and participating package stores; and

(F) promote and market, and educate consumers about Texas wines.

(b) The committee's responsibilities under this subchapter are as follows.

(1) The committee shall be composed of the following members appointed by the commissioner:

(A) three representatives of Texas wineries;

(B) one representative of Texas wine wholesalers;

(C) one representative of Texas package stores;

(D) one representative of the department; and

(E) one representative of the commission.

(2) Committee members serve without compensation or reimbursement of expenses;

(3) Four members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee;

(4) The committee shall assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program; and

(5) The committee may advise the department on the adoption of rules relating to the administration of the Texas Wine Marketing Assistance Program.

§17.202. Package Store Participation.

(a) Participation by a package store in the Texas Wine Marketing Assistance Program is voluntary, unless the commission requires the participation of all package stores.

(b) If, after the program has been operating for at least twelve months, the commissioner determines after a hearing that package stores in the state are not participating in the program on a reasonably distributed geographical basis, the commissioner may request that the commission require all package stores in the state to participate in the program.

(c) In making a determination under this section, the commissioner shall consider the percentage participation by package stores within each of the commission's regions.

(d) For purposes of determining whether an individual store is participating in the program, the commissioner may consider whether a package store received a request to participate, and whether a package store actually participated.

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 October 8, 2001.

TRD-200106046
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 7. GAS UTILITIES DIVISION
SUBCHAPTER B. SUBSTANTIVE RULES

16 TAC §7.70, §7.81

The Railroad Commission of Texas proposes to amend §7.70, relating to general and definitions, and §7.81, relating to safety regulations adopted, to adopt by reference recent amendments issued by the United States Department of Transportation (USDOT) in 49 Code of Federal Regulations (CFR) Parts 192, 193, 195, and 199 concerning qualifications of pipeline personnel, determining the extent of corrosion on gas pipelines, pipeline repair, underwater abandoned pipeline facilities, standard NFPA 59A concerning liquefied natural gas, industry standard on leak detection, risk-based alternative to pressure testing certain older pipelines, standards for breakout tanks, pipeline integrity management in high consequence areas, areas unusually sensitive to environmental damage, and drug and alcohol testing for pipeline facility employees; and in 49 CFR Part 40, relating to procedures for transportation workplace drug and alcohol testing programs.

The Commission proposes to change the date stated in §7.70 and §7.81 to reflect the new date - September 30, 2001 - on which the Commission adopts by reference the federal regulations in 49 CFR Parts 192, 193, 195, and 199, and 49 CFR Part 40.

USDOT's Amendment Nos. 192-86 and 195-67, published at 64 Federal Register (FR) 46853, require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of the rule is to ensure a qualified work force and to reduce the probability and consequences of incidents caused by human error.

The rule was developed through a negotiation process. Amendment No. 192-90, published at 66 FR 43523, contains corrections to the final regulations on qualification of pipeline personnel, published at 64 FR 46853. The corrections were minor and did not affect the substance or content of the rule. Amendment No. 195-72 published at 66 FR 43523 contains corrections to the final regulations on qualification of pipeline personnel, published August 27, 1999, at 64 FR 46853. These corrections were minor and did not affect the substance or content of the rule.

Amendment No. 192-87, published at 64 FR 56978, requires that when gas pipeline operators find harmful external corrosion on buried metallic pipelines that have been exposed, they must investigate further to determine if additional harmful corrosion exists in the vicinity of the original exposure. The new requirement may prevent accidents due to corrosion that might otherwise go undetected near an exposed portion of a pipeline.

Amendment Nos. 192-88 and 195-68, published at 64 FR 69660, concern a safety performance standard for the repair of corroded or damaged steel pipe in gas or hazardous liquid pipelines. Because present safety standards specify particular methods of repair, operators must get approval from government regulators to use innovative repair technologies. The new performance standard is likely to encourage technological innovations and reduce repair costs without reducing safety.

Amendment Nos. 192-89 and 195-69, published at 65 FR 54440, require the last operator of an abandoned natural gas or hazardous liquid pipeline facility that is located offshore or that crosses under, over, or through a commercially navigable waterway to submit a report of the abandonment to the Secretary of Transportation. The results of the final rule will be a Congressionally mandated central depository of information about underwater abandoned pipeline facilities that the Secretary of Transportation will make available to the appropriate federal and state agencies. Amendment No. 192-89 was corrected at 65 FR 57861 to change a date on page 54443, in §192.727(g)(2), from "April 10, 2000," to "April 10, 2001."

Amendment No. 193-17, published at 65 FR 10950, incorporates by reference an industry consensus standard for liquefied natural gas (LNG) facilities subject to the pipeline safety regulations. The standard, developed by the National Fire Protection Association (NFPA), specifies siting, design, construction, equipment, and fire protection requirements that apply to new LNG facilities and to existing facilities that have been replaced, relocated, or significantly altered. The incorporation by reference of this standard will allow the LNG industry to use the latest technology, materials, and practices while maintaining the current level of safety.

Amendment No. 195-62, published at 63 FR 36373, adopts as a referenced document an industry publication for pipeline leak detection, API 1130, "Computational Pipeline Monitoring," published by the American Petroleum Institute (API). This rule requires that an operator of a hazardous liquid pipeline use API 1130 in conjunction with other information in designing, evaluating, operating, maintaining, and testing its software- based leak detection system. The use of this document will significantly advance the acceptance of leak detection technology on hazardous liquid pipelines. The rule does not require operators to install such systems.

Amendment No. 195-65, published at 64 FR 6814, corrects a final rule published at 63 FR 59475, which allowed operators of older hazardous liquid and carbon dioxide pipelines to elect a risk-based alternative in lieu of the existing hydrostatic pressure test rule. This amendment makes a minor correction by removing an unrelated sentence that inadvertently appeared in Table 4 of Appendix B.

Amendment No. 195-66, published at 64 FR 15926, incorporates by reference consensus standards for aboveground steel storage tanks into the hazardous liquid pipeline safety regulations. These standards apply to the design, construction, and testing of new tanks, and the repairs, alterations, and replacement of existing tanks. All new and existing breakout tanks are also subject to the operating and maintenance requirements specified in this rule. The incorporation by reference of these standards will significantly improve the minimum level of safety applicable to the transportation and storage of petroleum and petroleum products at breakout tanks. This amendment was corrected at 64 FR 40777 to correct the effective date of the final rule published on April 2, 1999, to comply with requirements of the Small Business Regulatory Enforcement Fairness Act of 1996; the effective date was corrected to July 28, 1999. Amendment No. 195-66 was again corrected at 65 FR 4770; these corrections were minor and added API 1130 to the list of incorporated references and corrected the reference to API Standard 653 to include Addendum 2.

Amendment No. 195-70, published at 65 FR 75378, specifies regulations to assess, evaluate, repair, and validate through comprehensive analysis the integrity of hazardous liquid pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. The Office of Pipeline Safety requires that an operator develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas through internal inspection, pressure testing, or other equally effective assessment means. The program must also provide for periodically evaluating the pipeline segments through comprehensive information analysis, remediating potential problems found through the assessment and evaluation, and ensuring additional protection to the segments and the high consequence areas through preventive and mitigative measures. Through this required program, hazardous liquid operators will comprehensively evaluate the entire range of threats to each pipeline segment's integrity by analyzing all available information about the pipeline segment and the consequences of a failure on a high consequence area. This includes analyzing information on the potential for damage due to excavation; data gathered through the required integrity assessment; results of other inspections, tests, surveillance, and patrols required by the pipeline safety regulations, including corrosion control monitoring and cathodic protection surveys; and information about how a failure could affect the high consequence area. The final rule requires an operator to take prompt action to address the integrity issues raised by the assessment and analysis. This means an operator must evaluate all defects and repair those that could reduce a pipeline's integrity. An operator must develop a schedule that prioritizes the defects for evaluation and repair, including time frames for promptly reviewing and analyzing the integrity assessment results and completing the repairs. An operator must also provide additional protection for these pipeline segments through other remedial actions, and preventive and mitigative measures. The final rule took effect March 31, 2001, and required an operator to complete an identification of all pipeline segments that could affect a high consequence area no later than December 31,

2001, and to develop a written integrity management program no later than March 31, 2002. Amendment No. 195-70 was later amended at 66 FR 9532 to delay the effective date of the final rule from March 31, 2001, to May 29, 2001.

Amendment No. 195-71, published at 65 FR 80530, defines drinking water and ecological areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline release. The Research and Special Programs Administration (RSPA) of USDOT created this definition through a series of public workshops, pilot testing, technical review of the pilot test results, and extensive collaboration with a wide range of federal, state, public, and industry stakeholders. The final rule does not require specific action by pipeline operators but will be used in existing and future regulations. This amendment was changed at 66 FR 9532 to delay the effective date from February 20, 2001, to April 21, 2001.

Amendment No. 199-19, published at 66 FR 47114, conforms the pipeline facility drug and alcohol testing regulations with DOT's "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." The amendment also changes the format of the regulations to make them easier to apply and understand. The purpose of the changes is to make the regulations clearer and consistent with DOT's drug and alcohol testing policies.

The Commission also proposes to adopt by reference USDOT's amendments to 49 CFR Part 40 regarding procedures for transportation workplace drug and alcohol testing programs. At 65 FR 79462, USDOT revised its drug and alcohol testing procedures regulations to make the organization and language clearer, to incorporate guidance and interpretations of the rule into the rule text, and to update the rule to include new provisions responding to changes in technology, the testing industry, and the Department's program. The final rule was adopted and published at 66 FR 41944 and effective August 1, 2001.

Mary McDaniel, P.E., assistant director for Pipeline Safety Section, Gas Services Division, has determined that for each year of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing the amendments.

The public benefits anticipated as a result of the enforcement of these amendments will be enhanced public safety and increased awareness of safety requirements in the transportation of natural gas, carbon dioxide, and hazardous liquids. The anticipated economic cost to individuals who are required to comply will be minimal. The cost of compliance will be the same for micro-, small, and large businesses, but the cost cannot be determined because it depends on the type and size of the pipeline systems. Texas pipelines are already required to comply with the federal rules. Under 49 U.S.C. §§60101 et seq., the Railroad Commission is authorized to enforce pipeline safety laws so long as the state's scheme of regulation is as strict or stricter than the federal system. In order to be considered "as strict or stricter" than the federal scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited application. Therefore, even though the rules already apply in Texas, the Railroad Commission must also adopt the rules for its own system.

Comments on the proposal may be submitted to Mary McDaniel, Pipeline Safety Section, Gas Services Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments should refer to Gas Utilities Docket No. 9247, and should be filed no later than 14 days after this publication in the *Texas Register*. The Commission has determined that 14 days is a reasonable opportunity for persons to submit data, views, or arguments, inasmuch as the federal rules already apply to pipelines in Texas. For additional information, call Ms. McDaniel at (512) 463-7058.

The amendments are proposed under Texas Utilities Code §121.201, which authorizes the Commission to adopt rules and safety standards for the transportation of gas and for gas pipeline facilities, and under the Texas Natural Resources Code, §117.001, which authorizes the Commission to regulate the pipeline transportation of hazardous liquids and carbon dioxide and facilities related thereto under, and to take any other requisite action in accordance with, the Pipeline Safety Act, 49 United States Code §60101.

Texas Utilities Code §121.201 and Texas Natural Resources Code §117.001 are affected by this proposal.

Issued in Austin, Texas on October 2, 2001.

§7.70. General and Definitions.

(a) Minimum safety standards. All gas pipeline facilities and the transportation of gas within this state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act, 49 United States Code Annotated, §60101 et seq., shall be designed, constructed, maintained and operated in accordance with the Minimum Safety Standards for Natural Gas, 49 Code of Federal Regulations (CFR) Part 192, and Liquified Natural Gas Facilities, 49 CFR Part 193, and the Control of Drug Use in Natural Gas, Liquified Natural Gas, and Hazardous Liquid Pipeline Operations, 49 CFR, Part 199, with amendments, effective September 30, 2001, [~~January 15, 1999,~~] and with the additional regulations set out in this section.

(b) Definitions. The following words and terms, when used in this section, §7.71, and §7.73 of this title (relating to Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests and Master Metered Systems), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Person--Any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

(2) Gas--Natural gas, flammable gas, or other gas which is toxic or corrosive.

(3) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas; except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the secretary of transportation may define as a nonrural area.

(4) Pipeline facilities--Facilities which include, but are not limited to, new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation.

(5) Gas company--Any person who owns or operates pipeline facilities used for the transportation of gas.

(6) Commission--The Railroad Commission of Texas.

(7) Pipeline Safety Section--The Pipeline Safety Section of the Gas Utilities Division of the Railroad Commission of Texas.

(8) Master meter system--A pipeline system (other than a local distribution company) for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter, or by other means, such as by rents.

(c) Applicability. All gas pipeline facilities and facilities used in the transportation of natural gas shall be subject to the minimum safety standards, as amended, except for those facilities and transportation services subject to the jurisdiction of the Federal Energy Regulatory Commission pursuant to 15 United States Code §§717-717z. In addition, all pipeline facilities originating in Texas waters (three marine leagues and all bay areas) shall be subject to the minimum safety standards. These pipeline facilities include those production and flow lines originating at the well. All new facilities included in this rule shall have one year after the date of the rule for achieving compliance with these regulations.

(d) Minimum standards only. The minimum safety standards adopted in subsection (a) of this section establish minimum standards of accepted good practice. Nothing contained in this section shall prevent the commission, after an appropriate public hearing or investigation, from prescribing more stringent permanent standards in individual situations.

(e) Special circumstances.

(1) In the event any gas company cannot determine to its satisfaction the standards applicable to special circumstances, it may, by written application, request the commission for advice and recommendations, and in a special case, the commission may authorize exemption from, or modification, or temporary suspension of any of the provisions of the minimum safety standards.

(2) If a gas company operates pipeline facilities and/or transports gas which are in part subject to the jurisdiction of this commission and in part subject to the Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968, it may request in writing to the commission that all of its pipeline facilities and transportation of gas be subject to the exclusive jurisdiction of the Department of Transportation. If the gas company files a written statement under oath that it will fully comply with the federal safety rules and regulations, the commission may grant an exemption from compliance with the commission's safety rules and regulations.

(f) Retroactivity. Nothing in these rules and regulations provided shall be applied retroactively to any existing installations insofar as its design, fabrication, installation, or established operating pressure is concerned, except as required by regulations of the office of Pipeline Safety, Department of Transportation.

(g) Reports and reporting.

(1) Reporting of accident, leaks, or incidents.

(A) At the earliest practical moment following discovery (within two hours), each gas company shall notify the commission by telephone of any event that involves a release of gas from its pipeline(s) which:

(i) caused a death or any personal injury requiring hospitalization; or

(ii) required taking any segment of a transmission line out of service; or

(iii) resulted in gas igniting; or

(iv) caused estimated damage to the property of the operator, or others, or both (including gas loss), totaling $5,000 or more; or

(v) could reasonably be judged as significant because of location, rerouting of traffic, evacuation of building(s), media interest, etc., even though it does not meet clauses (i), (ii),

(iii) , or (iv) of this subparagraph.

(B) A telephonic report is not required of a leak or incident which meets only subparagraph (A) (ii) of this paragraph, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(C) The telephonic notice required by this paragraph shall be made to the Railroad Commission emergency line, Pipeline Safety Section at (512) 463-6788, and shall include the following:

(i) company/operator name;

(ii) location of leak or incident;

(iii) time of accident/incident;

(iv) fatalities and/or personal injuries;

(v) phone number of operator; and

(vi) other significant facts relevant to the accident or incident.

(D) Except as provided in subparagraph (E) of this paragraph, each gas company shall report, in writing, a summary of each accident or incident, under subparagraph (A)(i)-(iv) of this paragraph. The report shall be submitted to the Pipeline Safety Section as soon as practicable, but not more than 30 days after detection, on forms supplied by the Department of Transportation. This report is to be submitted in duplicate. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(E) The accident or incident report required by subparagraph (D) of this paragraph need not be submitted with respect to master meter systems.

(F) Notwithstanding the exceptions in subparagraphs (D) and (E) of this paragraph, the commission may require that a written report be submitted for an accident or incident.

(2) Pipeline safety annual reports.

(A) Except as provided in subparagraph (B) of this paragraph, each gas company shall submit an annual report for its system(s) in the same manner as required by 49 Code of Federal Regulations, Part 191. The report shall be submitted to the Pipeline Safety Section in duplicate on forms supplied by the Department of Transportation, not later than March 15, for the preceding calendar year. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(B) The annual report required by subparagraph (A) of this paragraph need not be submitted with respect to:

(i) petroleum gas systems which serve less than 100 customers from a single source; or

(ii) master meter systems.

(C) Plastic pipe failure report. Each natural gas operator shall record information relating to each material failure of plastic pipe during each calendar year, and annually shall file with the Commission, in conjunction with the annual report required to be filed under subparagraph (A) of this paragraph, a summary of the failures on Form PS-80, Annual Plastic Pipe Failure Report. Operators shall file initial

Forms PS-80, reporting plastic pipe failure data for calendar year 2001, by March 15, 2002.

(3) Safety related condition reports. Each gas company shall submit in writing a safety-related condition report for any condition as outlined in 49 Code of Federal Regulations, Part 191. The report required under 49 Code of Federal Regulations 191.25, sent to the Department of Transportation, must also be submitted to the Pipeline Safety Section.

(4) New construction report. Each operator shall file with the commission, at least 30 days prior to commencement of construction, the proposed originating and terminating points, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. The new construction report is required for any installation of over five miles of total pipe.

(5) Plastic pipe installation and/or removal report.

(A) Each natural gas operator shall report to the Commission on March 15, 2003, and March 15, 2004, the amount in miles of plastic pipe installed and/or removed during the preceding calendar year on Form PS-82, Annual Report of Plastic Installation and/or Removal. The mileage shall be identified by:

(i) system;

(ii) nominal pipe size;

(iii) material designation code;

(iv) pipe category; and

(v) pipe manufacturer.

(B) For all new installations of plastic pipe, each natural gas operator shall record and maintain for the life of the pipeline the following information for each pipeline segment:

(i) all specification information printed on the pipe;

(ii) the total length;

(iii) a citation to the applicable joining procedure(s) used for the pipe and the fittings; and

(iv) the location of the installation to distinguish the end points. A pipeline segment is defined as a continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change.

(6) Plastic pipe inventory report. Beginning March 15, 2005, and annually thereafter, each natural gas operator shall report to the Commission the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe shall be determined by a review of the records of the operator and shall be reported on Form PS-81, Plastic Pipe Inventory. The report shall include the following:

(A) system;

(B) miles of pipe;

(C) calendar year of installation;

(D) nominal pipe size;

(E) material designation code;

(F) pipe category; and

(G) pipe manufacturer.

(7) Offshore pipeline condition report. Each operator shall file with the commission, within 60 days of completion of underwater inspection, a report of the condition of all underwater pipelines subject to 49 Code of Federal Regulations 192.612(a) which shall include the information required in 49 Code of Federal Regulations 191.27.

(8) Electronic format required. Operators of systems with more than 1,000 customers, shall file the reports specified in paragraphs (2)(C), (5) and (6) of this subsection electronically in a format specified by the Commission.

(9) Report forms; signature required. Operators shall complete all forms required to be filed in accord with this section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

(h) Records. On or after the effective date of these sections, each gas company operating gas facilities subject to the safety jurisdiction of this commission shall comply with the provisions of the minimum safety standards as amended, with respect to records required. Each gas company shall maintain records as the commission may require which are adequate to show compliance or noncompliance with such rules. All such records shall be kept open and readily available to the commission and/or its representatives at reasonable times. These documents and records shall be retained for the period established by 49 Code of Federal Regulations, Part 192, and §7.71 of this title (relating to Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests). If no time period has been established, the records must be kept for a period of no less than five years.

(i) Operation and maintenance procedures. Each gas company operating a gas facility subject the safety jurisdiction of this commission shall submit to the director of the Pipeline Safety Section the procedural plans required by 49 Code of Federal Regulations, Part 192.605. If the commission finds the plan is inadequate to achieve safe operation, it shall require the plan to be revised. Thereafter, any and all changes in such plan of inspection and maintenance shall be submitted 20 days before it becomes effective.

(j) Enforcement.

(1) The Pipeline Safety Section shall have responsibility for the enforcement of the provisions of these sections. To this end, it shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies operating in Texas on a sampling basis, in order to satisfy the commission that the gas companies are in compliance with the provisions of such rules.

(2) In the matter of the enforcement of the provisions of these sections, each gas company operating in Texas, and its officers and employees, shall make readily available any of its files, records, other documents, the plant, property, and facilities to the commission, or its representatives, in the administration and enforcement of these sections.

(3) Each gas company shall provide to the commission, or its representatives, such reports, supplemental data, and information as the commission shall from time to time reasonably require, in the administration and enforcement of these sections.

(k) Supplemental regulations. The following provisions supplement the regulations appearing in 49 Code of Federal Regulations, Part 192, adopted under subsection (a) of this section.

(1) Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.

(2) Section 192.455(b) is supplemented by the following language after the first sentence: Tests, investigation, or experience

must be backed by documented proof to substantiate results and determinations.

(3) Section 192.457 is supplemented:

(A) by the following language in subsection (b)(3): (3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations;

(B) by the following subsection: (d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety.

(4) Section 192.465 is supplemented:

(A) by the following language after the first sentence of subsection (a): Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings;

(B) by the following language in subsection (e): (e) After the initial evaluation required by paragraphs (b) and (c) of §192.455 and paragraph (b) of §192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations;

(C) by the following subsection: (f) When leak detection surveys are used to determine areas of active corrosion, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use.

(5) Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material.

(6) Section 192.479 is supplemented by the following subsection: (c) "atmospheric corrosion" means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material.

§7.81. Safety Regulations Adopted.

The commission adopts by specific reference the provisions (except as modified herein or hereafter) established by the United States Secretary of Transportation under the Pipeline Safety Act 49 U.S.C.A. §60101 et seq. and set forth in 49 C.F.R. Part 195, Regulations for Transportation of Hazardous Liquids by Pipeline, and 49 C.F.R. Part 199, Control of Drug Use in Natural Gas, Liquified Natural Gas, and Hazardous Liquid Pipeline Operations, effective September 30, 2001 [~~January 15, 1999~~]. Nothing in this section shall prevent the commission, after notice and hearing, from prescribing more stringent standards in individual situations. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

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 October 2, 2001.

TRD-200105962
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 475-1295

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CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

16 TAC §11.1

The Railroad Commission of Texas (Commission) proposes amendments to §11.1, relating to Adoption by Reference, to change the title of the rule and to correct the reference to the Commission's rules in 16 TAC Chapter 1; these amendments are nonsubstantive.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications to state or local governments as a result of the amendments. The public benefit anticipated as a result of the amendments will be the clarification of the Commission's rule. There is no anticipated economic cost for small businesses, micro-businesses, or individuals.

The Commission has concurrently filed a notice of intention to review Chapter 11, Subchapters A and E in their entirety in accordance with Tex. Gov. Code §2001.39 (*as amended by Acts 1999, 76th Leg., ch. 1499 §1.11(a)*).

Comments concerning the proposed amendments to §11.1 may be submitted to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, or via electronic mail to melvin.hodgkiss@rrc.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. For more information, call Mr. Hodgkiss at (512) 463-6901.

The Commission proposes the amendment under Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice and procedure.

Texas Government Code, §2001.004, is affected by the proposed amendments.

Issued in Austin, Texas on October 2, 2001.

§11.1. Practice and Procedure [~~Adoption by Reference~~].

Proceedings before the Surface Mining and Reclamation Division of the [~~The~~] Railroad Commission of Texas shall comply with Chapter 1 of this title (relating to Practice and Procedure) [~~adopts by reference the Rules of Practice and Procedure of the Railroad Commission of Texas for use before its Surface Mining and Reclamation Division~~].

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 October 2, 2001.

TRD-200105963
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1031

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

The Texas Education Agency (TEA) proposes the repeal of §61.1031, concerning the school facility assistance program. The proposed repeal would delete a rule concerning state assistance to school districts for construction of new instructional sites. The 75th Texas Legislature repealed the authority for this section in 1997 and replaced the School Facility Assistance Program with the Instructional Facilities Allotment Program.

The 74th Texas Legislature established the School Facility Assistance Program to help public school districts pay for the cost of constructing new facilities. This program was repealed by actions of the 75th Texas Legislature and replaced with the Instructional Facilities Allotment Program. The existing rule for the School Facility Assistance Program was not immediately repealed because some districts continued to receive funding pursuant to its parameters and requirements for a period of time following the establishment of the new program.

Joe Wisnoski, assistant commissioner for school finance and fiscal analysis, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeal.

Mr. Wisnoski has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an obsolete rule and will carry out the stipulations of the 75th Texas Legislature, 1997, and upheld by subsequent legislatures. 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 repeal.

Comments on the proposal may be submitted to Criss Cloudt, 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 repeal 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 repeal is proposed under the Texas Education Code (TEC), §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports as may be necessary to implement and administer the Foundation School Program. TEC, §§42.401-42.410, authorizing the School Facility Assistance Program, was repealed by actions of the 75th Texas Legislature in 1997 and replaced with the Instructional Facilities Allotment Program.

The repeal implements TEC, §42.004, and the repeal of TEC, §§42.401-42.410.

§61.1031. School Facility Assistance Program.

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

Filed with the Office of the Secretary of State, on October 8, 2001.

TRD-200106033
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-9701

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES
DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §89.1151, §89.1185

The Texas Education Agency (TEA) proposes amendments to §89.1151 and §89.1185, concerning resolution of disputes between parents and school districts. The sections delineate provisions relating to special education hearings. The amendments reflect changes that clarify the commissioner of education's intent regarding the timeline for requesting a special education due process hearing and appealing the decision of a hearing officer.

19 TAC §89.1151 and 19 TAC §89.1185 were adopted to be effective March 6, 2001, to address concerns with procedures for initiating a due process hearing and appealing due process hearing decisions. The provisions adopted in §89.1151(c) and §89.1185(p) resulted in requests for clarification regarding the commissioner of education's intent with implementation of the new regulations. The proposed amendments to §89.1151(c) and §89.1185(p) address those requests for clarification by explicitly

delaying implementation of the new timelines for bringing due process hearings and appeals to provide all parties a fair and reasonable notice of changes to the timelines. A technical edit is also proposed to 19 TAC §89.1185(l) that corrects a cross-reference.

Nora Hancock, associate commissioner for education of special populations, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Hancock has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be clarifying the rulemaking intent and providing explicit guidance to interested parties regarding timelines for bringing due process hearings and appeals. 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 amendments.

Comments on the proposal may be submitted to Criss Cloudt, 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 amendments 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 amendments are proposed under 34 Code of Federal Regulations (CFR), §300.507, which specifies provisions for an impartial due process hearing and parent notice to the public agency; 34 CFR, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The amendments implement 34 CFR, §300.507 and §300.600; and Texas Education Code, §29.001.

§89.1151. Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.

(b) The Texas Education (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507- 300.514, and 34 CFR, §300.528, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.

(c) Effective with requests for due process hearings filed on or after August 1, 2002, a parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

~~[(c) The issues presented in a due process hearing, and any relief requested, are limited to and may be based only upon facts alleged to have occurred not more than one year prior to the date that the request for due process hearing is received by TEA or since the date of the last admission, review, and dismissal committee meeting of the student who is the subject of the hearing, whichever period is longer, but in no event more than two years prior to the date that the request for due process hearing is received by TEA.]~~

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 Code of Federal Regulations (CFR), §§300.507-300.514, 300.521, or 300.528, or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer.

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (o) ~~[(m)]~~ of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the school district unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the school district the appropriate information in the due process complaint in accordance with 34 CFR, §300.507(c).

(n) In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.

(o) A hearing officer may grant extensions of time for good cause beyond the 45-day period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

(p) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.512. Effective with hearing officer decisions issued on or after August 1, 2002, a [~~A~~] civil action brought in state or federal court under 20 USC, §1415(i)(2), and 34 CFR, §300.512, must be initiated no more than 45 days after the date the hearing officer issued his or her written decision in the due process hearing.

(q) In accordance with 34 CFR, §300.514(c), a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

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 October 8, 2001.

TRD-200106034
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-9701

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CHAPTER 176. DRIVER TRAINING SCHOOLS

SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

The Texas Education Agency (TEA) proposes amendments to §§176.1101, 176.1103, 176.1105, 176.1106, 176.1107, and 176.1108; the repeal of §§176.1109, 176.1110, 176.1111, 176.1112, 176.1113, 176.1114, 176.1115, and 176.1116; and new §§176.1109, 176.1110, 176.1111, 176.1112, 176.1113, 176.1114, 176.1115, 176.1116, 176.1117, and 176.1118, concerning driver training schools. The sections establish minimum standards for operating a licensed driving safety school or course provider in Texas. The sections specify definitions, requirements, and procedures relating to driving safety school licensure; driving safety school and course provider responsibilities; administrative staff members; driving safety instructor license; courses of instruction; student enrollment contracts; cancellation and refund policy; facilities and equipment; student complaints; records; names and advertising; uniform certificate of course completion; and application fees and other charges. The proposed amendments, repeals, and new sections define and set forth requirements for the new legislatively-mandated specialized driving safety course and amend technical standards for alternative delivery method (ADM) courses in both driving safety and specialized driving safety.

Texas Civil Statutes, Article 4413(29c), §6, authorizes the commissioner to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act. 19 TAC Chapter 176, Driver Training Schools, Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers, adopted to be effective December 26, 1999, establishes minimum standards for operating a licensed driving safety school or course provider in Texas. Amendments to Chapter 176, Subchapter BB, were adopted to be effective July 19, 2001, that updated definitions and added content to modify and strengthen requirements. The July 2001 amendments included the revision of the definition of "new course" to add driving safety courses taught by an ADM. Based on public comment, required critical elements of the agency's ADM technical standards document were incorporated into 19 TAC §176.1108 to specify in rule the requirements for driving safety courses taught by an ADM.

House Bill 1739, 77th Texas Legislature, 2001, requires the TEA to develop a curriculum for a specialized occupant protection driving safety course; approve the new course; and license instructors, schools, and course owners that plan to provide the course. The new specialized driving safety course is to include instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts. Additionally, it is necessary to amend provisions relating to alternative delivery methods of driving safety instruction to incorporate requirements applicable to driving safety and specialized driving safety courses.

In order to provide rules for the new specialized driving safety course, to meet additional legislative mandates, and to clarify and modify existing rule language, the following revisions to 19 TAC Chapter 176, Subchapter BB, are proposed:

Section 176.1101 is modified to add a new paragraph (1) to define "Alternative Delivery Method classroom" and a new paragraph (17) to define "Specialized driving safety course." The modification also renumbers all existing paragraphs and

adds language to paragraphs (11), (12), (14), and (18) regarding inclusion of the specialized driving safety course.

Section 176.1103 is modified to add language to subsection (a)(2) requiring course provider verification for specialized driving safety school licenses. The modification also provides language in new subsection (a)(3) that requires driving safety schools and classrooms to be located within Texas.

Section 176.1105 is modified to add language to subsection (a) to require that course providers be located in Texas and to add the specialized driving safety course in addition to the driving safety course. Modifications in subsections (b)(2) and (c)(1) provide licensing language to cover both types of instructors and the modification in subsection (b)(3) provides language to cover both types of courses. Revisions in subsections (b)(4) and (c)(5) amend the types of records that course providers, schools, and employees may not falsify. New subsections (b)(7) and (8) and (c)(8) and (9) require schools and course providers to develop a means to ensure security and integrity of student data and implement a privacy policy that is available to students.

Section 176.1106(a)(2) is modified to add language regarding the specialized driving safety course.

Section 176.1107 is modified to add language regarding specialized driving safety throughout the section. Other amendments to this section include: revised subsection (b) adds new paragraph (4) requiring a photocopy of the applicant's drivers license and renumbers the subsequent paragraph; revised subsection (c)(1)(B) clarifies the responsibilities of a driving safety instructor; new subsection (c)(2), (4), and (6) regarding "specialized driving safety instructor," "specialized driving safety instructor trainer," and "instructor development course specialized driving safety instructor trainer" provide information on the requirements and responsibilities for each; revised subsection (c)(5)(A)(i)-(ii) clarifies the requirements and responsibilities for an instructor development course driving safety instructor trainer; revised subsection (j) changes language to require that any criminal complaint other than a minor traffic violation be reported; and revised subsection (m) clarifies which records an instructor shall not falsify.

Section 176.1108 is modified to change the title to "Driving Safety Courses of Instruction." Other amendments to the section include: revised subsection (a) changes the date an inactive course may be revoked to January 1, 2003; revised subsection (a)(1)(B) adds language to clarify the procedure for driving safety courses presented in languages other than English; revised subsection (a)(1)(C)(x) clarifies that this requirement refers to traditional classroom settings; revised subsection (a)(1)(C)(xi) requires instructors to make a material effort to establish the identity of the student; revised subsection (a)(1)(D)(iv) adds a new subclause (XII) to include anatomical gifts to the items required to be covered and renumbers subsequent subclauses; and revised subsection (a)(1)(F) clarifies the requirements for final examinations. Additionally, subsection (a)(1)(I) relating to driving safety courses delivered by an ADM has been removed in its entirety. These provisions are now found in proposed new §176.1110. Existing subsection (a)(1)(J) is renumbered as subsection (a)(1)(I) and includes modified language to clarify who may author an approved driving safety course.

Section 176.1109 (relating to student enrollment contracts) is repealed. (These provisions are now found in proposed new §176.1111.) Proposed new §176.1109 (relating to specialized driving safety courses of instruction) contains requirements for the newly mandated specialized driving safety course including curriculum, instructor development courses, and continuing education.

Section 176.1110 (relating to cancellation and refund policy) is repealed. (These provisions are now found in proposed new §176.1112.) Proposed new §176.1110 (relating to alternative delivery methods of driving safety instruction) contains the requirements applicable to driving safety and specialized driving safety courses delivered by an ADM. Provisions for courses delivered by ADMs were previously found in §176.1108(a)(1)(I). The ADM provisions (now found in proposed new §176.1110) have been revised to include specialized driving safety where applicable and other changes, as follows:

New subsection (a)(1)(A)(i) provides for both driving safety and specialized driving safety ADMs and gives a reference for time and content requirements. New subsection (a)(1)(A)(xi) establishes the requirements for multimedia. The requirements specified in subclauses (I) and (III) through (VII) have been modified. New subsection (a)(1)(A)(xii) and (xiii) clarifies authorship and support requirements. New subsection (a)(1)(A)(xv) defines which changes to the course content and delivery method require TEA approval prior to implementation.

New subsection (a)(1)(B) requires course owners to develop security policies and procedures that address the provider's security program and to submit that information to TEA by July 1, 2002. Clauses (i)-(x) provide the elements of the security program.

New subsection (a)(1)(C) requires course owners to develop and maintain a means to reasonably authenticate students. Clauses (i)-(v) set forth authentication types.

New subsection (a)(1)(D) requires that ADMs incorporate a personal validation process that verifies student identity and participation, and language has been revised to provide guidance and identify the required elements. Language regarding time limits for students to respond to questions has been deleted. Clause (ii) provides an alternate method of validation for students for whom no third-party database information is available.

New subsection (a)(1)(E) requires that ADMs incorporate a course validation process that verifies student participation and comprehension of course material. Language has been revised to provide guidance; identify the required elements, including test bank size; and list the types of questions allowed. Language regarding time limits for students to respond to questions has been deleted.

New subsection (a)(1)(F) sets out the requirements for final examination including required elements, passing grade, and examination administration.

New subsection (a)(1)(G) requires that the ADM failure criteria provide reasonable assurance of user identity and student comprehension and participation.

New subsection (a)(1)(H) requires the ADM to create and maintain student records documenting enrollment, verification of identity, participation, and testing. The language has been revised to outline guidance and set out the required elements.

New subsection (a)(1)(I) establishes new and revised requirements that the ADM must meet in the area of data security.

New subsection (a)(1)(J) requires that course owners locate technical support, application server host, and data storage facilities in Texas.

New subsection (a)(1)(K) requires that ADMs approved prior to the effective date of the revisions demonstrate compliance prior to January 31, 2002, unless otherwise stated.

New subsection (a)(2) provides for TEA to approve ADMs that meet the specific requirements, including subparagraphs (A)-(J).

New subsection (b)(1)-(4) requires that approved ADMs be audited, receive a copy of the TEA audit program materials, address audit exceptions, and provide missing student data in the event of closure.

Section 176.1111 (relating to facilities and equipment) is repealed. (These provisions are now found in proposed new §176.1113.) Proposed new §176.1111 (relating to student enrollment contracts) incorporates new language relating to specialized driving safety and the requirement that the school notify the student regarding security and privacy policies on student data.

Section 176.1112 (relating to student complaints) is repealed. (These provisions are now found in proposed new §176.1114.) Proposed new §176.1112 (relating to cancellation and refund policy) contains no changes.

Section 176.1113 (relating to records) is repealed. (These provisions are now found in proposed new §176.1115.) Proposed new §176.1113 (relating to facilities and equipment) incorporates new language regarding specialized driving safety.

Section 176.1114 (relating to names and advertising) is repealed. (These provisions are now found in proposed new §176.1116.) Proposed new §176.1114 (relating to student complaints) contains no changes.

Section 176.1115 (relating to uniform certificate of course completion for driving safety course) is repealed. (These provisions are now found in proposed new §176.1117.) Proposed new §176.1115 (relating to records) incorporates new language regarding specialized driving safety.

Section 176.1116 (relating to application fees and other changes) is repealed. (These provisions are now found in proposed new §176.1118.) Proposed new §176.1116 (relating to names and advertising) deletes or modifies certain advertising requirements and specifies that the prohibition of using like or deceptively similar names without written consent applies to Texas driver training schools.

Proposed new §176.1117 (relating to uniform certificate of course completion for driving safety course) incorporates new language to add specialized driving safety and to allow course owners to use commercial delivery services as well as mail for delivery of certificates.

Proposed new §176.1118 (relating to application fees and other charges) incorporates new language regarding specialized driving safety.

Robert Muller, associate commissioner for continuing education and school improvement, has determined that for the first five-year period the amendments, repeals, and new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. House Bill 1739, 77th Texas Legislature, 2001, requires the driver training division to: (1) develop a curriculum for a specialized occupant protection driving safety course; (2) approve the new course; and (3) license instructors, schools, and course owners that plan to provide the course. It is projected that the fees collected to approve and regulate the program will offset the fiscal impact to the state and result in an increase in revenue. The estimated increase in revenue will be $73,650 in fiscal year 2002; $22,250 in fiscal year 2003; and $180,000 in fiscal years 2004-2006. The estimated FY 2002 increase to state government is estimated based on: (1) two course approval fees at $9,000 and two course provider licenses at $2,000; (2) ten school licenses at $150 and ten administrative licenses at $15; (3) 100 instructor licenses at $75; and (4) 25,000 uniform certificates of completion at $1.70 per certificate. The FY 2003 projection is based on: (1) two course approval fees at $9,000 and two course provider licenses at $2,000; (2) 50 school licenses at $150 and 50 administrative licenses at $15; (3) 300 instructor licenses at $75; (4) 100 instructor license renewal fees at $25; and (5) 100,000 uniform certificates of completion at $1.70 per certificate. The increase in revenue for FY 2004 and beyond is based on 400 instructor license renewal fees at $25 per year and 100,000 uniform certificates of completion. The $9,000 specialized driving safety course approval fee will be a significant start-up expense for small businesses. However, these businesses may be able to recoup the fee by passing the expense through to the student as a course cost. This is a new course and there is no reliable data on how many students will complete this course per year. The TEA projects that the initial number of students per year will not exceed 100,000.

The proposed amendments and new sections establish security program requirements for both driving safety and specialized driving safety course owners. The amendments require course providers and schools offering a traditional driving safety course to develop and maintain a means to ensure the security and integrity of the student information as well as develop a means to ensure student privacy. ADM course owners will be required to develop a risk management plan, establish specific security procedures, and design a business continuity and disaster recovery program. The level of cost associated with these requirements could vary considerably depending on whether systems are already in place and decisions made by businesses in choosing a method to meet the requirements. In addition, there will be significant costs to individuals and small businesses that must relocate their facilities and equipment to be within the State of Texas; become licensed as a specialized driving safety course provider, school, or instructor; and comply with privacy and security requirements for all types of driving safety and specialized driving safety courses, including traditional courses. Also, there will be costs to individuals and small businesses that already have an approved ADM associated with: geographic location of facilities and equipment; course design, content accuracy, and multimedia requirements; equipment reliability issues; authentication and validation requirements; equipment security requirements; disaster recovery system requirements; security and privacy programs; and ability to meet state audit, compliance, and verification processes. Again, the degree to which costs will be incurred by businesses is expected to vary greatly depending on each business' circumstances. Some businesses will incur costs associated with most or all of the requirements, while others will be affected to a lesser extent.

Mr. Muller has determined that for each year of the first five years the amendments, repeals, and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be the provision of the framework for the newly mandated specialized driving safety course and the establishment of requirements for course owners, schools, and instructors. In addition, the proposal defines technical standards for ADM courses. These requirements are necessary to fulfill the purpose of the

Texas Driver and Traffic Safety Education Act, which states, in part, that the attitudes and skills of drivers must be improved through licensing and regulation by the TEA because it is a matter of vital public importance to identify and implement all reasonable means to reduce the toll in human suffering and property loss that is inflicted by vehicle crashes. There will be an effect on small businesses as described previously. There is anticipated economic cost as described previously to persons who are required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Criss Cloudt, 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 amendments, repeals, and new sections 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 TEA division responsible for driver training will conduct a public hearing on October 29, 2001, from 9:00 a.m. to 1:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress Avenue, Austin, TX.

19 TAC §§176.1101, 176.1103, 176.1105 - 176.1118

The amendments and new sections are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The amendments and new sections implement the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1101. Definitions.

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

(1) Alternative Delivery Method classroom--The location at which the student taking the course receives course material, such as a driving safety school, a storefront, the application server hosting an online course, or facilities of these types, that have been approved by the Texas Education Agency (TEA).

(2) [~~(1)~~] Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course. This includes Meta tags and search engine listings.

(3) [~~(2)~~] Break--An interruption in a course of instruction occurring after the course introduction and before the comprehensive exam and course summation.

(4) [~~(3)~~] Change of ownership of a school or course provider--A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(5) [~~(4)~~] Clock hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(6) [~~(5)~~] Course validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(7) [~~(6)~~] Division--The division of the TEA [~~Texas Education Agency (TEA)~~] responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(8) [~~(7)~~] Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(9) [~~(8)~~] Final examination question--A question designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(10) [~~(9)~~] Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school or course provider, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or course provider currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school or course provider with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a driver education certificate or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

(11) [~~(10)~~] Inactive course--A driving safety or specialized driving safety course for which no uniform certificates of completion have been purchased for 36 months or longer.

(12) [~~(11)~~] Instructor trainer--A driving safety instructor or specialized driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(13) [~~(12)~~] Moral turpitude--Conduct that is inherently immoral or dishonest.

(14) [~~(13)~~] New course--A driving safety or specialized driving safety course is considered new when it has not been approved

by TEA to be offered previously ; [,] or has been approved by TEA and offered and then discontinued ; [,] or the content, lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(15) [~~(14)~~] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(16) [~~(15)~~] Public or private school--For the purpose of these rules, a public or private school is an accredited public or nonpublic secondary school.

(17) Specialized driving safety course--A six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(18) [~~(16)~~] Uniform certificate of course completion--A document that is printed, administered, and supplied by TEA to owners or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Transportation Code, Chapter 543, and Code of Criminal Procedure, Article 45.0511. This term encompasses all parts of a uniform certificate of course completion with the same serial number. It is a government record.

§176.1103. Driving Safety School Licensure.

(a) Application for driving safety school. An application for a license for a driving safety school shall be made on forms supplied by the Texas Education Agency (TEA) and submitted to TEA by the course provider. The application shall [~~include~~]:

(1) include individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The driving safety school shall receive TEA approval for each location prior to advertising or offering a driving safety course at the location; [~~and~~]

(2) include verification from the licensed course provider that the school is authorized to provide the approved driving safety or specialized driving safety course and that the school will operate in compliance with all course provider policies and procedures ; and [.]

(3) not be accepted or approved for a driving safety school or a driving safety school classroom location that is physically located outside the state of Texas.

(b) Verification of ownership for driving safety school.

(1) In the case of an original or change of owner application for a driving safety school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(c) Effective date of the driving safety school license. The effective date of the driving safety school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(d) Purchase of driving safety school.

(1) A person or persons purchasing a licensed driving safety school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(e) New location.

(1) The division director shall be notified in writing of any change of address of a driving safety school at least three working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division director as being necessary. The documents shall be submitted to TEA by the course provider on behalf of the school. A driving safety school license may be issued after the required documents are approved.

(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.

(4) The school must maintain a current mailing address at the division.

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be postmarked or hand-delivered by the school to the course provider at least 30 days before the expiration of the license and shall include the following:

(1) completed application form for renewal;

(2) current list of instructors;

(3) current list of classrooms;

(4) annual renewal fee, if applicable; and

(5) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(g) Denial, revocation, or conditional license. For schools approved to offer only one driving safety course, the authority to operate a driving safety school shall cease if the course provider license is denied or revoked or if the course provider removes all authorization to teach the course. The license of the driving safety school may continue for 60 calendar days to allow the school owner to obtain approval to operate under a different course provider license. At the end of the 60-day period, the school license shall be revoked unless the school will offer an approved course. A current driving safety school license shall not be renewed without an approved course. A driving safety school license may be denied, revoked, or conditioned separately from the license of the course provider.

(h) Notification of legal action. A school shall notify the division director in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(i) School closure.

(1) The school owner shall notify TEA and the course provider at least 15 business days before the anticipated school closure. The school owner shall provide written notice to TEA and the course provider of the actual discontinuance of the operation within five working days after the cessation of classes. A school shall forward all records to the course provider responsible for the records within five days.

(2) The course provider shall provide TEA with written notice of a school closure within five working days after knowledge of cessation of classes.

(3) The division director may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school owner or course provider stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;

(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;

(D) when the school owner allows the school license to expire; or

(E) when the school does not have the facilities and equipment to operate pursuant to this subchapter.

(j) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driving safety school and the public or private school. The course shall be subject to the same rules that apply at the licensed driving safety school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) Course providers must be located in the State of Texas. All instruction in a driving safety or specialized driving safety course shall be performed in Texas locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor may teach the 12 hours necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed driving safety or specialized driving safety instructor trainer who has been trained in the curriculum being instructed. If a licensed instructor leaves the employment of any driving safety school, the school administrative staff member shall notify the course provider in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and a statement about the termination. The course provider shall provide the information to TEA in writing within five working days of receipt of notification.

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course, and in the manner in which the course was approved;

(2) ensure that the course is provided by persons who have a valid current [~~driving safety~~] instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to the course [~~driving safety~~] within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driver training [~~driving safety~~] records;

(5) ensure that applications for licenses or approvals are forwarded to TEA within ten days of receipt at the course provider facilities; [~~and~~]

(6) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year ; [.]

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current [~~driving safety~~] instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion only for a person who has successfully completed the entire course;

(5) not falsify driver training [~~driving safety~~] records;

(6) ensure that instructors give students the opportunity to evaluate the course and instructor on an official evaluation form; [~~and~~]

(7) evaluate instructor performance in accordance with the course provider plan ; [.]

(8) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(9) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(d) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any driving safety school shall be deemed an agent of the driving safety school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1106. Administrative Staff Members.

(a) Each driving safety school shall designate one person as the administrative staff member.

(1) Duties. The school administrative staff member shall be responsible for all actions related to day- to-day operation and administration of the school, which includes supervising instructors, organizing and scheduling classes, maintaining the school plant, and maintaining proper administrative records.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent, or be a licensed driving safety or specialized driving safety instructor.

(b) During any period when the school administrative staff member is required to be absent from the school, the owner shall designate a liaison to provide student records, contracts, and schedules to Texas Education Agency (TEA) staff. The liaison is not required to pay an application fee; however, the school shall notify TEA in writing as to who will be appointed as liaison.

(c) An individual shall be approved by TEA as the administrative staff member before employment as such.

(d) The school administrative staff member or liaison shall assist TEA representatives during any announced compliance visit by TEA.

(e) Violations at the school or by the administrative staff member may result in removal of the approval of the administrative staff member.

§176.1107. Driving Safety Instructor License.

(a) Application for licensing as a driving safety or specialized driving safety instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driving safety or specialized driving safety instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach, which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original driving safety or specialized driving safety instructor's license shall submit to the course provider, who shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division director; [~~and~~]

(4) a clear and legible photocopy of the current, valid drivers license issued to the applicant; and

(5) [~~(4)~~] any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driving safety or specialized driving safety instructor license may qualify for the following endorsements.

(1) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a driving safety instructor include instructing a TEA-approved driving safety course specific to the curriculum in which the [~~individual is trained~~] instructor is endorsed and for which the certificate is issued.

(2) Specialized driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training and 12 hours of practical teaching. The 24 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing. Alternatively, the applicant may submit a copy of a driving safety instructor license or certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and 12 hours of training and 12 hours of practical teaching. The 12 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a specialized driving safety instructor include instructing a TEA-approved specialized driving safety course specific to the curriculum in which the instructor is endorsed and for which the certificate is issued.

(3) [~~(2)~~] Driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 60 hours of experience, exclusive of the 36- hour instructor development course, in the same driving safety course for which the individual is to teach; or

(iii) completion of all the requirements of a driving safety instructor and 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same driving safety course for which the individual is to teach.

(B) The responsibilities of a driving safety instructor trainer include instructing a TEA- approved driving safety course, supervising instructor trainees, and signing as a driving safety instructor trainer for the 12 hours of practice teaching required for driving safety instructor trainees.

(4) Specialized driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 60 hours of experience, exclusive of the 36- hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(iii) completion of all the requirements for a specialized driving safety instructor license and 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same specialized driving safety course for which the individual is to teach; or

(iv) completion of all the requirements for a specialized driving safety instructor license and 150 hours verifiable experience as a certified National Highway Traffic Safety Association Child Passenger Safety technician or instructor, of which the most recent 30 hours shall be in the same specialized driving safety course for which the individual is to teach.

(B) The responsibilities of a specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, and signing as a specialized driving safety instructor trainer for the 12 hours of practice teaching required for the specialized driving safety instructor trainees.

(5) [~~(3)~~] Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer plus an additional 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 60 hours shall be in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course [~~with 300 hours experience as a driving safety instructor. An author of an approved course may hire an instructor with 300 verifiable hours of experience to be trained and licensed as an instructor development course driving safety instructor trainer~~]. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director the ability to teach the course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual [~~instructor~~] as an instructor development course instructor trainer in driving safety.

(B) The responsibilities of an instructor development course driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved driving safety course, and signing student instruction records for driving safety trainees.

(6) Instructor development course specialized driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a specialized driving safety instructor trainer plus an additional 150 hours of verifiable experience as a licensed specialized driving safety instructor, of which the most recent 60 hours shall be in the same specialized driving safety course for which the individual is to teach, or proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designees the ability to teach the course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in specialized driving safety.

(B) The responsibilities of an instructor development course specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved specialized driving safety course, and signing student instruction records for specialized driving safety trainees.

(d) A renewal application for a driving safety or specialized driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and submitted by the course provider. The annual instructor licensing fee and evidence of continuing education shall accompany the application.

(2) A complete license renewal application shall be postmarked or hand-delivered to the course provider by the instructor at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education for each driving safety or specialized driving safety course endorsement.

(e) Continuing education requirements include the following.

(1) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion shall be provided to TEA by the course provider on behalf of the instructors. The form shall be signed by the instructor receiving the training and the course provider or designee.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(4) A licensed individual who teaches an approved continuing education course may receive credit for attending continuing education.

(5) A driving safety or specialized driving safety continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA that is

submitted by the course provider. The application shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driving safety and specialized driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes;

(2) the annual instructor licensing fee; and

(3) completion of renewal requirements for current endorsements.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing by the course provider and shall include payment of the duplicate instructor license fee.

(i) The course provider shall notify the TEA of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director, school owner, and course provider in writing of any criminal complaint other than a minor traffic violation [~~identified in subsection (n) of this section~~] filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driver training [~~driving safety~~] records.

(n) The commissioner of education may suspend, revoke, or deny a license to any driving safety or specialized driving safety instructor trainer or instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Driving safety and specialized driving safety instruction involves accurate record keeping and reporting for court documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252- 13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Transportation Code, Chapter 521, Subchapter N or O, during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

§176.1108. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by paragraph (1)(I) of this subsection, all course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval of any course that is inactive as of January 1, 2003, [~~September 1, 2000,~~] will be revoked.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to: promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final exam, and evaluation in the proposed language accompanied by a statement from a licensed or certified translator that the materials are the same in

both languages. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials that shall be provided for use by each student as a guide to the course. The division director may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive exam and summation.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive exam and summation, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) The TEA shall produce and supply to course providers, at no cost to the course providers, copies of a short video that will provide information about the requirements for completing a six-hour driving safety course and the penalties involved for accepting a uniform certificate of course completion for a course that was not six hours in length. The course provider shall ensure that the video is shown to all students of each class prior to the final examination. Alternative methods for providing the required information to the students may be submitted by the course provider and approved at the discretion of the division director.

(x) In a traditional classroom setting, no [~~No~~] more than 50 students per class are permitted in driving safety courses if any student in the class receives a uniform certificate of completion.

(xi) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for each unit and the course as a whole.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety (DPS).

(iii) Factors influencing driver performance--minimum of 20 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives-- to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety;
(-a-) statistics;
(-b-) causes; and
(-c-) evasive actions;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) anatomical gifts;

(XIII) [~~(XII)~~] litter prevention;

(XIV) [~~(XIII)~~] law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the DPS on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XV) [~~(XIV)~~] other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 20 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving--minimum of 20 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective-- to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.).

(ix) Driving emergencies--minimum of 40 minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive); and

(V) helmets and other protective equipment.

(xi) Alcohol and traffic safety--minimum of 40 minutes (instructional objective--to identify the effects of alcohol on roadway users). Instruction shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects;

(IV) synergistic effects; and

(V) countermeasures.

(xii) Comprehensive examination and summation--minimum of 15 minutes (this shall be the last unit of instruction).

(xiii) The remaining required 20 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)- (V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in subparagraph (D)(ii)-(xi) of this paragraph for a total of at least 20 questions. [~~each unit, excluding the course introduction and comprehensive examination units.~~] The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions, but may facilitate alternative testing. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides [~~of courses providing~~] alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a

level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c).

[(I) Driving safety courses delivered by an alternative delivery method (ADM).]

[(i) The commissioner of education may approve an ADM for an approved driving safety course and waive any rules to accomplish this approval if the ADM includes testing and security measures that are at least as secure as the measures available in a usual classroom, including:]

[(I) as provided in this paragraph, the educational objectives, minimum course content, applicable areas of course and time management, examination, and student course evaluation requirements are met. The following requirements shall also be met:]

[(-a-) the ADM shall follow the same topic order and course content sequence as the approved traditional course. A predominantly text-based ADM will not be considered. The minimum time requirements for each unit and the course as a whole described in subparagraphs (C) and (D) of this paragraph shall be met;]

[(-b-) advertisement of goods and services shall not appear during the actual instructional times of the course;]

[(-c-) the student shall be able to browse or review previously completed material;]

[(-d-) the student shall be able to navigate logically and systematically through the course;]

[(-e-) technical support personnel shall be knowledgeable of course content and technical issues;]

[(-f-) the course shall be adequately edited for correct use of grammar, punctuation, and spelling before it is submitted for review; and]

[(-g-) multi-media requirements shall be met, as follows:]

[(-1-) all videos shall be timed and include a validation process that verifies the student spent the required time viewing and comprehending the video material;]

[(-2-) videos may utilize streaming video, flash, or comparable technologies;]

[(-3-) the video shall be captured at 15 frames per second or more. Video size shall be at least 240x180 pixels and shall resize while maintaining its aspect ratio;]

[(-4-) if using streaming video, the video file shall stream for multiple connection speeds. A download rate of at least 28.8Kbps is required;]

[(-5-) the video shall have inline controls available to the user for pausing and restarting;]

[(-6-) videos shall display inline on the same page with the relevant text; and]

[(-7-) permanent moving animation that is not related to the topic being presented on the page is prohibited;]

[(II) the course materials are written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA- licensed driving safety instructor;]

[(III) with the exception of circumstances beyond the control of the course owner, the student has adequate access to a licensed instructor and telephonic technical assistance (help desk) (on the average, within two minutes) throughout the course such that the flow of instructional information is not delayed;]

[(IV) the equipment and course materials are available only through and at the approved driving safety school or classroom or at a storefront location specifically approved by TEA for that purpose. TEA shall be informed prior to any moves, additions, or changes to the course, data processing system, operating system, or organizational rules maintained by the course owner that could impact the course content or the confidentiality of any part of the system of records, applications, operating systems, or hardware used by the course owner;]

[(V) there is sufficient evidence to demonstrate the security of the course and that the general public cannot circumvent it, including the following:]

[(-a-) course owners shall make a material effort to validate the student's identity at the point of registration and throughout the course and maintain a record of the results;]

[(-b-) acceptable validation methods to verify student identity are third-party verification of personal information, voice recognition, thumb-print scans, retina scans, student-solicited responses when combined with third-party verification of personal information, or other acceptable validation methods that meet or exceed these methods; and]

[(-c-) the student shall be allowed no more than 60 seconds to respond to each personal or course validation question and shall have only one chance to respond correctly;]

[(VI) the ADM shall incorporate a personal validation process that verifies student identity and participation throughout the course that includes the following:]

[(-a-) if the ADM requires a student's picture identification to be verified at the beginning and conclusion of the course, the following criteria shall be met:]

[(-1-) at least one third-party verified personal validation question per unit (minimum of ten) shall be asked, excluding log-on questions;]

[(-2-) all questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and]

[(-3-) the test bank for personal validation questions shall equal three times the number of questions being asked;]

[(-b-) if the ADM does not require a student's picture identification at the beginning and conclusion of the course, the following criteria shall be met:]

[(-1-) at least one personal validation question shall be asked throughout the course every ten to 20 minutes, for a total of at least 30 personal validation questions. Personal validation questions shall be asked while the student is completing the course, not including the final examination. Registration, log-on questions (i.e., password), and re-entry questions shall not be counted as part of the 30 personal validation questions;]

[(-2-) at least 20 of the 30 personal validation questions asked during the course must be verified against a third-party database;]

[(-3-) the test bank for third-party verified validation questions shall be at least 30 questions and shall be drawn from databases of at least two different sources. A maximum of 12 questions may be drawn from driver's license and/or Social Security information;]

[(-4-) all third-party verifiable validation questions shall be randomly generated in respect to time and

order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and]

[(-5-) at least ten additional personal validation questions shall be asked and shall be randomly generated from a list of 30 questions supplied by TEA for this purpose. All questions from this list shall be randomly generated in respect to time and order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and]

[(-c-) exceptions to the personal validation process shall only be approved for a personal validation process that meets or exceeds the requirements specified in items (-a-) and (-b-) of this subclause;]

[(VII) the ADM shall incorporate a course validation process that verifies student participation and comprehension of course material, including the following:]

[(-a-) the ADM includes built-in time parameters to ensure that six hours have been attended and completed by the student; and]

[(-b-) testing of student participation throughout the course to ensure that the student receives the minimum course content and time management requirements for instruction as provided by subparagraphs (C) and (D) of this paragraph, as follows:]

[(-1-) at least 80 course validation questions shall be asked throughout the course. Each student shall be asked at least five time-limited course questions during every major unit throughout the course. Course validation questions shall be asked while the student is completing the course, not including the final examination;]

[(-2-) at least 50% of the course validation questions asked shall be educational content questions drawn from statistics, facts, and techniques presented as part of the course material;]

[(-3-) the test bank for course validation questions shall be at least 160 questions, of which at least 50% shall be educational questions drawn from the course material;]

[(-4-) all course validation questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design;]

[(-5-) at least 20% of course validation questions shall relate to the content of multimedia "clips" presented during the course. All questions shall be generated in random order and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design;]

[(-6-) course validation questions, whether pertaining to educational content or to a specific event, fact, person, or situation presented during the course, shall be of such difficulty that the answer may not be easily determined without having completed the actual instruction; and]

[(-7-) course validation questions shall be short answer, multiple choice, essay, or a combination of these forms;]

[(VIII) the ADM shall incorporate a final examination that measures student knowledge and comprehension of course material by an examination consisting of at least two questions per required unit set forth in subparagraph (D)(ii)-(xi) of this paragraph for a total of at least 20 questions. The final examination questions shall be drawn from a bank of at least 80 questions. Test questions shall be generated in random order, and no test question shall be repeated within the 20-question final examination. Test questions shall be of such difficulty that the answer may not be easily determined without having completed the actual instruction. Testing shall be administered by a TEA-licensed instructor, and if the ADM does not involve the student being in physical proximity to the instructor, the testing may be administered using technology;]

[(IX) the ADM provides for failure criteria for personal validation, course validation, and final examination that meet or exceed those set forth in items (-a-)-(-c-) of this subclause. Course owners shall rigidly enforce failure criteria as follows:]

[(-a-) for personal validation questions that are not answered within 60 seconds of the time of transmission from the course owner or that are answered incorrectly, the student shall be suspended from the course after each missed question. The student shall be allowed to reenter the course after the first missed question if the student successfully answers the missed question along with at least three of five randomly generated personal validation questions. The student shall be failed and shall not receive a uniform certificate of completion if the student misses more than two verified personal validation questions. Course providers shall be allowed to make allowances for obvious and logical mistakes by students, such as when a student enters information that matches the database information in substance but not in form;]

[(-b-) for course validation questions that are not answered within 60 seconds of the time of transmission from the course provider or that are answered incorrectly, the student shall be suspended from the course after missing 16 questions. The student shall be allowed to reenter the course upon correctly answering three of five course validation questions from material relevant to the missed question. The seventeenth, eighteenth, and nineteenth missed questions shall be handled in the same manner. The twentieth missed question shall result in course failure and the student shall not receive a uniform certificate of completion. Course providers shall be allowed to make allowances for obvious and logical mistakes by students, such as when a student enters information that matches the correct answer in substance but not in form; and]

[(-c-) for final examination questions, students shall be allowed only one answer to each question posed. If the question is not answered within 60 seconds of the time of transmission from the course provider or is answered incorrectly, the question shall be counted as incorrect. A student must correctly answer 70% or more of all the questions on the final examination. A student shall be tested on the final examination a total of no more than three times. If the student is re-tested after failing the final examination, the re-test shall consist of 20 randomly generated questions that meet the same time and content requirements as the final examination. If a student fails to correctly answer at least 70% of the final examination questions on three consecutive attempts, the student shall be failed and denied a uniform certificate of completion;]

[(X) the ADM provides for the creation and maintenance of records documenting student enrollment, the steps taken to verify each student's identity verification, the participation of each student, and the testing of each student's knowledge. The following requirements shall be met:]

[(-a-) the enrollment contract shall identify the type of any third- party data that will be accessed prior to or during validation of the student's identity. The course owner shall obtain the student's approval to access the third-party data;]

[(-b-) the enrollment contract shall identify the hardware and software requirements to successfully complete the

course. The course owner shall obtain the student's acknowledgement that the student understands the computer requirements;]

[(-c-) the enrollment contract shall specify that interruptions in course service may occur over which the course owner has no control. The course owner shall obtain the student's acknowledgement that the student understands that service interruptions may occur;

[(-d-) the enrollment contract shall specify the data that will be collected from the student that could be sold to entities that may derive commercial or social benefits from the data, and the course owner shall obtain the student's approval for collection and distribution of that data;]

[(-e-) TEA shall be informed of proposed changes to course and student validation records (i.e., footprints), and no changes can be implemented without written approval signed by the division director; and]

[(-f-) the course owner shall maintain a complete student course data file (footprint) to demonstrate student activity. Course owners shall ensure that at least the following information is collected and retained for creating the student footprint:]

[(-1-) student's name and driver's license number;]

[(-2-) dates and times of student activity (log-on and log-off times);]

[(-3-) dates, times, and results of personal-validation and course-content questions. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, then the "key" or "code" must be furnished to TEA;]

[(-4-) verification of the amount of time the student spent in each unit;]

[(-5-) verification of the amount of total time the student spent in the course;]

[(-6-) an identifier of the reason a person was suspended or failed the course;]

[(-7-) dates, times, and responses for each question on the final examination. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, the "key" or "code" must be furnished to TEA; and]

[(-8-) name or identity number of staff member entering comments, retesting, or revalidating student; and]

[(XI) the ADM provides for data security, as follows:]

[(-a-) records that constitute sensitive or confidential information shall be protected in each individual course;]

[(-b-) any programs, applications, or databases that contain testing programs, files containing student identification information, files containing information on certification or certificate issuance, or testing "keys" shall be subject to the rules governing protection of data;]

[(-c-) prior to ADM approval, course owners shall provide TEA a non-disclosure agreement in which they assure that they will not provide any stored or transient information to a requesting party other than an internal business function, TEA, or a TEA- approved recipient. Each internal business function given access to sensitive/confidential information shall be approved in writing by TEA. Alternatively, the course owner shall include in the enrollment contract a privacy statement regarding data that will be collected from the student that could be sold to entities that may derive commercial or social benefits from the data, and the course owner shall obtain the student's approval for collection and distribution of that data;]

[(-d-) access to confidential electronic information as defined in item (-b-) of this subclause shall occur through strictly controlled and audited software and/or hardware interfaces. Access to confidential information shall be documented and occur through strictly enforced business rules and operational procedures that comply with state and federal laws;]

[(-e-) remote transmission of sensitive data such as student identity data shall take place through secure channels implementing asymmetric key (public key) cryptography or its equivalent. Remote transmission includes any data that traverses the Internet or other data or voice network(s) that exist in the public domain apart from the course owner's on-premises local area network;]

[(-f-) course owners shall make information inaccessible to those who are not authorized to obtain it, and are responsible for maintaining the security of hardware, software, and confidential information stored therein. Either logical or physical isolation of the system hardware and software or a combination of the two is acceptable. If a non-distributed (central) architecture is used in which all applications (secure and otherwise) reside on a single host, then acceptable access control mechanisms might include (but are not limited to) locked rooms for servers, tape libraries, and network infrastructure; secure operating systems; or encrypted databases, applications, and data files. In a distributed environment, additional mechanisms shall be employed such as the use of firewalls, network and application-level access control lists, and other protection technology to ensure that restricted interfaces and backends are not compromised;]

[(-g-) course owners shall assure that course data are readily, securely, and reliably available by electronic or printed means to TEA and TEA authorized recipients on a demand basis. If the data are not stored in Texas, then back-ups of the data shall be stored in Texas and any information that changes must be updated at least once every 24 hours;]

[(-h-) course owners shall have a disaster recovery system that ensures system restoration, in case of failure, to a working state of acceptable accuracy within 24 hours. A certification statement from an authorized/qualified third party will be considered acceptable proof that the course owner has an acceptable disaster recovery system;]

[(-i-) upon termination of the course approval and/or course provider license, any missing student data shall be delivered to TEA within seven calendar days of termination; and]

[(-j-) TEA reserves the right to require modifications to the system and policies maintained by the course owner if a threat to data security is perceived. This may involve providing a third-party certification to TEA by the course owner.]

[(ii) For an ADM approved before the effective date of this subsection, the ADM must demonstrate compliance with this subsection prior to December 31, 2001.]

(I) [(J)] Requirements for authorship. The course materials shall be written by a TEA- licensed driver training [driving safety] instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor.

(2) Instructor development courses.

(A) Driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor

trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division director; and

(IV) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division director of the scheduled dates, times, and locations of all continuing education courses no less than ten calendar days prior to the class being held, unless otherwise excepted by the division director.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division director and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.1109. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §176.1110 of this title (relating to Alternative Delivery Methods of Driving Safety Instruction), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §176.1101 of this title (relating to Definitions).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to: improving the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or contract, student instructional materials, final exam, and evaluation in the proposed language accompanied by a statement from a licensed or certified translator that the materials are the same in both languages. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of make-up work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials that shall be provided for use by each student as a guide to the course. The division director may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) No more than 50 students per class are permitted.

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for the course as a whole.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The occupant protection problem--minimum of 15 minutes (instructional objectives--to develop an understanding of Texas occupant protection laws and the national and state goals regarding occupant protection). Instruction shall address the following topics:

(I) identification of Texas Occupant Protection Laws;

(II) deaths, injuries and economic losses related to improper use of occupant restraint systems; and

(III) national and state goals regarding occupant protection.

(iii) Factors influencing driver performance--(instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Physical forces that influence driver control--(instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(v) Perceptual skills needed for driving--(instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(vi) Occupant protection equipment--minimum of 25 minutes (instructional objective--to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:

(I) anti-lock brakes;

(II) traction control devices;

(III) suspension control devices;

(IV) electronic stability/active handling systems;

(V) crumple zones;

(VI) door latch improvements;

(VII) tempered or safety glass;

(VIII) headlights; and

(IX) visibility enhancements.

(vii) Occupant restraint systems--minimum of 40 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) safety belts, airbags, and other protective equipment;

(II) proper usage and necessary precautions;

(III) vehicle control and driver stability;

(IV) crash dynamics and protection; and

(V) operational principles (active versus passive).

(viii) Child passenger safety--minimum of 120 minutes (instructional objective--to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:

(I) misconceptions or mistaken ideas regarding child passenger safety;

(II) purpose of child safety seats;

(III) how to secure the child properly and factors to consider;

(IV) child safety seat types and parts;

(V) precautions regarding child safety seats;

(VI) correct installation of a child safety restraint system; and

(VII) tips regarding child safety restraint systems.

(ix) Comprehensive examination and summation--minimum of 15 minutes (this shall be the last unit of instruction).

(x) The remaining required 20 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved specialized driving safety course described in the applicant's specialized driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a specialized driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of specialized driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c).

(I) Requirements for authorship. The course materials shall be written by a TEA-licensed driver training instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed specialized driving safety instructor.

(2) Specialized driving safety instructor development courses.

(A) Specialized driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for the instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives

at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the specialized course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the specialized driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the specialized driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety or specialized driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety- related subject matters. Evidence of the individuals' experience or expertise may be requested by the division director; and

(IV) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division director of the scheduled dates, times, and locations of all continuing education courses no less than ten calendar days prior to the class being held, unless otherwise excepted by the division director.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division director and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.1110. Alternative Delivery Methods of Driving Safety Instruction.

(a) Driving safety courses and specialized driving safety courses delivered by an alternative delivery method (ADM).

(1) The commissioner of education may approve an ADM for an approved driving safety course or specialized driving safety course and waive any rules to accomplish this approval if the ADM includes testing and security measures that are at least as secure as the measures available in a usual classroom.

(A) As provided in this paragraph, the educational objectives, minimum course content, applicable areas of course and time management, examination, and student course evaluation requirements are met. The following requirements shall also be met:

(i) the ADM shall follow the same topic order and course content sequence as the approved traditional course. A predominantly text-based ADM will not be considered. The minimum time requirements for each unit and the course as a whole described in §176.1108(a)(1)(C) and (D) of this title (relating to Driving Safety Courses of Instruction) and §176.1109(a)(1)(C) and (D) of this title (relating to Specialized Driving Safety Courses of Instruction) shall be met;

(ii) advertisement of goods and services shall not appear during the actual instructional times of the course;

(iii) the enrollment contract shall identify the type of any third-party data that will be accessed prior to or during validation of the student's identity. The course owner shall obtain the student's approval to access the third-party data;

(iv) the enrollment contract shall identify the hardware and software requirements to successfully complete the course. The course owner shall obtain the student's acknowledgement that the student understands the computer requirements;

(v) the enrollment contract shall specify that interruptions in course service may occur over which the course owner has no control. The course owner shall obtain the student's acknowledgement that the student understands that service interruptions may occur;

(vi) the enrollment contract shall include a statement that notifies the student of the course owners security and privacy policy regarding student data including personal and financial data. The course owner shall obtain the student's acknowledgement that the student understands the privacy policy;

(vii) the student shall be able to browse or review previously completed material;

(viii) the student shall be able to navigate logically and systematically through the course;

(ix) technical support personnel shall be knowledgeable of course content and technical issues;

(x) the written material for the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that does not detract from the subject matter;

(xi) multi-media requirements shall be met, as follows:

(I) all videos shall include a validation process that verifies the student spent the required time viewing and comprehending the video material;

(II) videos may utilize streaming video, flash, or comparable technologies;

(III) the video image shall be clear and provide quality that does not detract from the subject matter;

(IV) the audio shall be clear, provide quality that does not detract from the message, and when applicable be in sync with the video;

(V) the video shall have controls available to the user for pausing and restarting;

(VI) videos shall display with the relevant text; and

(VII) permanently moving animation that is not related to the topic being presented shall be prohibited;

(xii) the course materials are written by a Texas Education Agency (TEA)-licensed driver training instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor;

(xiii) with the exception of circumstances beyond the control of the course owner, the student has adequate access (on the average, within two minutes) to a licensed instructor and telephonic technical assistance (help desk) throughout the course such that the flow of instructional information is not delayed;

(xiv) the equipment and course materials are available only through and at the approved driving safety school or classroom or at a storefront location specifically approved by TEA for that purpose; and

(xv) course owners shall receive approval from TEA prior to implementing changes to the course or changes that significantly impact the delivery model, physical architecture, logical architecture, or other changes that will impact the periodic audit process or alter the understanding of the provider infrastructure, business model, or operations.

(B) Course owners shall develop security policies and procedures that address all elements of the course owner security program and submit this information to TEA by July 1, 2002. After July 1, 2002, all applicants for ADM approval shall submit this information as part of the ADM application package. The elements of the security program include:

(i) risk management plan;

(ii) user authentication and authorization procedures and technologies;

(iii) access control procedures and technologies;

(iv) auditing capability;

(v) systems availability;

(vi) course and systems integrity;

(vii) confidentiality and privacy;

(viii) business continuity and disaster recovery;

(ix) systems monitoring and incident response; and

(x) change control.

(C) Course owners shall develop and maintain a means to reasonably authenticate users on a periodic basis, upon entering, during, and exiting the driving safety or specialized driving safety course. This may be accomplished by a combination of the following:

(i) username and password authentication;

(ii) third-party database authentication including TEA-provided student validated questions;

(iii) certification authentication through the use of digital certificates;

(iv) biometric authentication; or

(v) other means that are as secure, as determined by TEA, and allow for reasonable assurance that the students are authenticated.

(D) The ADM shall incorporate a personal validation process that verifies student identity and participation throughout the course.

(i) Course owners using third-party authentication shall incorporate the following minimum requirements into the process:

(I) a minimum of 20 personal validation questions shall be asked throughout the course with at least one question in every major unit or section, not including the final examination;

(II) the personal third-party validation questions shall be verified against at least two third-party databases;

(III) the test bank for the third-party validated questions shall be at least 20 questions of which 14 must be asked during the course. No more than 14 questions shall be drawn from driver's license information;

(IV) the course owner shall ask a minimum of six personal validation questions from a bank of 20 TEA-provided questions; and

(V) the personal validation questions must be randomly generated in respect to time and order and the same question shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design.

(ii) A student for whom no third-party database information is available (for example, a student with an out-of-state drivers license) may be issued a uniform certificate of completion upon presentation to the course owner of a notarized copy of the student's driver's license and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding footprint.

(E) The ADM shall incorporate a course validation process that verifies student participation and comprehension of course material, including the following:

(i) the ADM includes built-in timers to ensure that six hours have been attended and completed by the student; and

(ii) testing of student participation throughout the course to ensure that the student receives the minimum course content and time management requirements for instruction, as follows:

(I) at least 40 course validation questions shall be asked throughout the course. Course validation questions shall be asked in every major unit or section throughout the course, not including the final examination;

(II) at least 50% of the course validation questions asked shall be educational content questions drawn from statistics, facts, and techniques presented as part of the course material;

(III) at least one course validation question shall be asked during or following each multimedia clip to show that the student participated in and comprehended the multimedia clip;

(IV) the test bank for course validation questions shall be at least 80 questions, of which at least 50% shall be educational questions drawn from the course material;

(V) all course validation questions shall be generated in random order within each major unit or section and the same questions shall not be asked more than twice. Questions that appear twice shall be as a result of random generation and not by design; and

(VI) course validation questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(F) The ADM shall incorporate a final examination that measures student knowledge and comprehension of course material by an examination consisting of at least two questions per required unit set forth in subparagraph (D)(ii)-(xi) of this paragraph for a total of at least 20 questions. The final examination questions shall be drawn from a bank of at least 80 questions. Test questions shall be generated in random order, and no test question shall be repeated within the 20-question final examination. Test questions shall be of such difficulty that the answer may not be easily determined without having completed the actual instruction. A student must correctly answer 70% or more of the questions on the final examination. Testing should be administered by a TEA-licensed instructor, and if the ADM does not involve the student being in physical proximity to the instructor, the testing may be administered using technology.

(G) The ADM failure criteria shall provide reasonable assurance of user identity and that the student is comprehending and participating with the course material.

(H) The ADM provides for the creation and maintenance of records documenting student enrollment, the steps taken to verify each student's identity verification, the participation of each student, and the testing of each student's knowledge. The following requirements shall be met:

(i) TEA shall be informed of proposed changes to course and student validation records (i.e., footprints), and no changes can be implemented without written approval signed by the division director; and

(ii) the course owner shall maintain a complete student course data file (footprint) to demonstrate student activity. Course owners shall ensure that at least the following information is collected and retained for creating the student footprint:

(I) student's name and driver's license number;

(II) dates and times of student activity (log-on and log-off times);

(III) dates, times, and results of personal-validation and course-content questions. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, then the "key" or "code" must be furnished to TEA;

(IV) verification of the amount of time the student spent in each unit;

(V) verification of the amount of total time the student spent in the course;

(VI) an identifier of the reason a person was suspended or failed the course;

(VII) dates, times, and responses for each question on the final examination. If a "key" or "code" is used to identify the question and answer, rather than recording the entire question and answer, the "key" or "code" must be furnished to TEA; and

(VIII) name or identity number of staff member entering comments, retesting, or revalidating student.

(I) The ADM provides for systems security, as follows:

(i) course owners shall develop and maintain a technology infrastructure that facilitates sound security and positively contributes to the student learning experience;

(ii) course owners shall develop and maintain an appropriate solution to ensure the integrity of information, especially financial and personal information, in transit and at rest;

(iii) course owners shall develop and maintain a systems back-up and disaster recovery capability;

(iv) course owners shall assure that course data are readily, securely, and reliably available by electronic or printed means to TEA and TEA authorized recipients on a demand basis. If the data are not stored in Texas, then back-ups of the data shall be stored in Texas and any information that changes must be updated at least once every 24 hours; and

(v) course owners shall develop and maintain a means to meet state audit, compliance, and verification processes.

(J) Course owners shall locate technical support, application server host, and data storage facilities located within the State of Texas.

(K) For an ADM approved before the effective date of this section, the ADM must demonstrate compliance with this section prior to January 31, 2002, unless otherwise stated.

(2) Course owners that meet the requirements outlined in paragraph (1)(A)-(J) of this subsection shall receive ADM approval.

(b) ADM audits.

(1) ADMs shall be audited and the results shall become a part of the course provider file maintained by the division.

(2) The TEA shall provide a copy of the TEA audit program and corresponding resource information.

(3) ADM course owners shall address all exceptions noted during the audit. Failure to do so shall result in adverse action up to and including revocation of ADM approval.

(4) ADM course owners, upon termination of the course approval and/or course provider license, shall deliver any missing student data to TEA within seven calendar days of termination.

§176.1111. Student Enrollment Contracts.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money.

(b) All driving safety and specialized driving safety contracts shall contain at least the following:

(1) the student's legal name and driver's license number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the driving safety school or approval number of the classroom location, as applicable;

(6) the specific name of the approved driving safety course to be taught;

(7) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the number of behind-the-wheel lessons, if applicable;

(11) the length of each lesson or course;

(12) the course provider's cancellation and refund policy;

(13) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(14) the signature and license number of the instructor;

(15) the signature of the student or the approved equivalent for a driving safety course delivered by an alternative delivery method; and

(16) a statement that notifies the student of the course owners security and privacy policy regarding student data, including personal and financial data.

(c) In addition, all driving safety school contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a uniform certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and verbal assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to the course provider (identify name and address) and to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) Driving safety or specialized driving safety may use a group contract that includes more than one student's name.

(e) A copy of each contract shall be a part of the student files maintained by the driving safety school and/or course provider.

(f) Course providers shall submit proposed or amended contracts to the division director, and those documents shall be approved prior to use by schools.

(g) Contracts for group instruction must meet all legal requirements.

(h) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

§176.1112. Cancellation and Refund Policy.

(a) Course provider cancellation shall be in accordance with Texas Civil Statutes, Article 4413(29c). Driving safety schools shall use the cancellation policy approved for the course provider.

(b) Refunds for all driving safety schools or course providers shall be completed within 30 days after the effective date of termination. Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school or course provider is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address; and

(2) certified mail to the student's permanent address.

(d) If it is determined that the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c), §13(h)(4), conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by Texas Education Agency (TEA) for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(e) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division director.

§176.1113. Facilities and Equipment.

(a) No classroom facility shall be located in a private residence.

(b) The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities for all students being trained;

(2) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and

(3) any materials that have been approved as a part of the course approval.

(c) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(d) Each school and classroom shall conduct the Texas Education Agency-approved driving safety or specialized driving safety course in a facility that promotes the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter. The driving safety or specialized driving safety course shall be provided in designated instructional areas that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids. Factors that will be considered in determining whether facilities promote learning include facility layout, visual and hearing distractions, and equipment functionality.

(e) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(f) A violation of the law or rules by any multiple classroom location constitutes a violation by the driving safety school.

(g) All classroom approvals are contingent on the driving safety school license and shall be subject to denial or revocation if such action is taken against the license of the driving safety school that has responsibility for the classroom location.

(h) Course provider facilities shall be staffed in such a manner that an employee of the course provider is available to answer questions and take messages during regular business hours.

(i) The course provider location shall be the physical address as stated on the course provider license.

§176.1114. Student Complaints.

(a) The course provider shall have a written grievance procedure approved by the division director that is disclosed to all students. Driving safety schools shall follow the procedures approved for the course provider. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The driving safety school or course provider shall make every effort to resolve complaints.

§176.1115. Records.

(a) A driving safety school or course provider shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). There may be announced or unannounced compliance surveys at each school or course provider each year.

(b) The course provider shall retain all student records for at least three years. A course provider shall maintain the records of the students who completed driving safety or specialized driving safety classes for the most current 12 months at the course provider location. The actual driving safety or specialized driving safety comprehension test does not have to be retained; however, the test score must be in the student's records. The division director may require a course provider to retain the actual test of each student for a designated period of time if deemed necessary by the division director to show compliance with the legal requirements.

(c) A course provider shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.

(d) A course provider shall not release student records that identify the student by name or address, or may lead to such identification, except:

(1) to authorized representatives of the TEA;

(2) to a peace officer;

(3) under court order or subpoena; or

(4) with written consent of both the student and at least one parent or legal guardian, if the student is under 18 years of age.

§176.1116. Names and Advertising.

(a) No driving safety school or course provider shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another Texas licensed driving safety, drug and alcohol driving awareness, or driver education school without written consent of that school. Schools or extensions holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driving safety school or course provider after August 31, 1995, with a name like, or deceptively similar to, a name used by another licensed driving safety, drug and alcohol driving awareness program, or driver education school. All advertisements of a multiple classroom location shall meet these same requirements.

(b) A school license shall not contain more than one school name. Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule. Use of names other than the approved school name may constitute a violation of this section.

(c) The division director may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that the school publish a retraction of such advertising claims in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension or revocation of the school license.

(d) A school or course provider shall not design, manufacture, or supply to any court of the state any written materials that may be false, misleading, or deceptive.

(e) The division director may deny approval of any course or the issuance of any required license or invoke other sanctions if a course provider or driving safety school advertises before the later of:

(1) the 30th day after the date the course owner or school applies for a course provider or driving safety school license; or

(2) the date the course owner or school receives a course provider or driving safety school license from the commissioner of education.

§176.1117. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety or specialized driving safety course shall ensure that each instructor completes the verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appears on this document has successfully completed the number of hours as required under Texas Civil Statutes, Article 4413(29c), and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall maintain a policy which effectively ensures protective measures are implemented by the course provider to ensure that unissued uniform certificates of course completion are secure at all times. The records and unissued uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all uniform certificates of course completion purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of the students receiving the uniform certificates of completion. The course provider shall ensure security of the data.

(4) The course provider shall electronically transmit data pertaining to issued uniform certificates of completion within seven calendar days of issuance of the certificates. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student.

(5) The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificates that have been issued.

(6) Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed the course provider's approved driving safety or specialized driving safety course taught by TEA-licensed instructors in TEA-approved locations as indicated on the verification of course completion document.

(7) The course provider must keep all parts of all voided uniform certificates of course completion.

(8) Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety or specialized driving safety course.

(9) Course providers shall report all unaccounted uniform certificates of course completion to the division director within two business days of the discovery of the incident. In addition, the course provider shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted uniform certificates of course completion. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division director within 30 days of the discovery on a form provided by TEA.

(10) Each unaccounted or missing uniform certificate of completion may be considered a separate violation within the meaning of Texas Civil Statutes, Article 4413(29c), §24(a). This may include lost, stolen, or otherwise unaccounted uniform certificates of course completion.

(11) Course providers shall mail all uniform certificates of course completion using first-class postage or an equivalent commercial delivery method.

(12) Course providers shall not transfer uniform certificates of course completion to a course other than the course for which the certificates were ordered from TEA.

(13) No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed the entire course as verified by a TEA-licensed instructor.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety and specialized driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety or specialized driving safety class for the purposes of Code of Criminal Procedure, Article 45.541. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

§176.1118. Application Fees and Other Charges.

(a) If a driving safety school or course provider changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.1104(g)(3) of this title (relating to Course Provider Licensure), the change of ownership of a course provider is substantially similar, the new owner shall pay the statutory fees allowed by Texas Civil Statutes, Article 4413(29c), §13(d)(3)(A).

(b) A late renewal fee shall be paid in addition to the annual renewal fee if a driving safety school or course provider fails to postmark a complete application for renewal at least 30 days before the expiration date of the driving safety school license. The requirements for a complete application for renewal are found in §176.1103(f) of this title (relating to Driving Safety School Licensure) and §176.1104(i) of this title (relating to Course Provider Licensure). The complete renewal application must be postmarked or hand- delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a driving safety or specialized driving safety course approval is $9,000.

(2) The initial fee for a course provider is $2,000.

(3) The initial fee for a driving safety school is $150.

(4) The annual renewal fee for a course provider is $200.

(5) The fee for a change of address of a course provider or driving safety school is $50.

(6) The fee for a change of name of a course provider or name of owner is $100.

(7) The fee for a change of name of a driving safety school or name of owner is $50.

(8) The application fee for each additional course for a driving safety school is $25.

(9) The application fee for each administrative staff member is $15.

(10) A processing fee of $50 shall accompany each application for an original driving safety or specialized driving safety instructor's license.

(11) The annual instructor license fee is $25.

(12) The late instructor renewal fee is $25.

(13) The duplicate driving safety or specialized driving safety instructor license fee is $8.

(14) The fee for an investigation at a driving safety school or course provider to resolve a complaint is $1,000.

(15) The course provider late renewal fee is $200.

(16) The driving safety school late renewal fee is $100.

(17) The fee for a duplicate uniform certificate of course completion is $10.

(18) The fee for a uniform certificate of course completion is $1.70.

(d) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a course provider, driving safety school, or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Civil Statutes, Article 4413(29c), §17.

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 October 8, 2001.

TRD-200106036
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-9701

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19 TAC §§176.1109 - 176.1116

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

The repeals are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The repeals implement the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1109. Student Enrollment Contracts.
§176.1110. Cancellation and Refund Policy.
§176.1111. Facilities and Equipment.
§176.1112. Student Complaints.
§176.1113. Records.
§176.1114. Names and Advertising.
§176.1115. Uniform Certificate of Course Completion for Driving Safety Course.
§176.1116. Application Fees and Other Charges.

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

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.2

The State Board of Dental Examiners proposes amendments to §101.2, Staggered Dental Registrations. The proposed changes are made to cause this rule to reflect changes as proposed to §102.1 Fee Schedule. Paragraphs (2) (A), (3)(A) and (4) (A) are amended to reflect a new fee of $93.00 for renewals of dental licenses as proposed in §102.1, Fee Schedule. The fee increases are proposed to increase revenues to cover increased appropriations.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that board fee rules will increase fees in amounts sufficient to cover increases in appropriations.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with §254.004 which requires the agency to establish fees sufficient to cover operating costs.

The proposed amended rule does not affect other statutes, articles, or codes.

§101.2. Staggered Dental Registrations.

The State Board of Dental Examiners, pursuant to the Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental license registration periods followed by annual registrations (i.e., renewals).

(1) The initial, staggered dental license registration periods will range from 6 months to 17 months. Each dentist for whom an initial dental license registration is issued will be assigned a computer-generated check digit. The length of the initial license registration period will be according to the assigned check digit as follows:

(A) a dentist assigned to check digit 1 will be registered for 6 months;

(B) a dentist assigned to check digit 2 will be registered for 7 months;

(C) a dentist assigned to check digit 3 will be registered for 8 months;

(D) a dentist assigned to check digit 4 will be registered for 9 months;

(E) a dentist assigned to check digit 5 will be registered for 11 months;

(F) a dentist assigned to check digit 6 will be registered for 12 months;

(G) a dentist assigned to check digit 7 will be registered for 13 months;

(H) a dentist assigned to check digit 8 will be registered for 14 months;

(I) a dentist assigned to check digit 9 will be registered for 15 months; and

(J) a dentist assigned to check digit 10 will be registered for 17 months.

(2) For individuals who qualify for dental licensure by examination, the initial dental license registration fees will be as follows:

(A) an annual license registration fee of $93.00 [~~$71.00~~] prorated according to the number of months in the initial registration period;

(B) $9.00 for peer assistance.

(3) For individuals who qualify for dental licensure by credentials, the initial dental license registration fees will be as follows:

(A) an annual license registration fee of $93.00 [~~$71.00~~] prorated according to the number of months in the initial registration period;

(B) $9.00 for peer assistance;

(C) a $200.00 annual assessment by the Texas Legislature for deposit to the General Revenue Fund.

(4) Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of his/her initial dental license registration period. Pursuant to §102.1(a) of this title (relating to Fee Schedule), the licensee will pay the following fee for each annual registration (i.e., renewal):

(A) a license registration fee of $93.00 [~~$71.00~~];

(B) $200.00 annual assessment by the Texas Legislature for deposit to the General Revenue Fund;

(C) $9.00 for peer assistance.

(5) Approximately 60 days prior to the expiration date of the initial dental license registration period, a license renewal notice will be mailed to all dental licensees who have that expiration date.

(6) A license registration expired for more than one year may not be renewed.

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

Filed with the Office of the Secretary of State, on October 5, 2001.

TRD-200106018
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §101.3

The State Board of Dental Examiners proposes new §101.3, Temporary License by Credentials, Dentists. The new rule will implement the provisions of House Bill 3507, Article 5, 77th Legislature, 2001, which provides that dentists may obtain a temporary license by credentials without meeting a five year practice requirement if the dentist works for a nonprofit corporation that accepts Medicaid patients.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the rule is that a clear procedure to implement statutory provisions for temporary licensure will be in effect.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with §256.101 (a)(10) which provides the Board with authority to establish rules governing licensure by credentials and with the provisions of House Bill 3507, Article 5, 77th Legislature, 2001

The proposed new rule does not affect other statutes, articles, or codes.

§101.3. Temporary License by Credentials, Dentists.

(a) The State Board of Dental Examiners will issue a temporary license to a dental applicant, upon payment of a fee, in an amount set by the Board, who meets all SBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria:

(1) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;

(3) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdiction entity of the current dentist's license and by a certified statement that he/she has current good standing in said jurisdiction;

(4) Has not been the subject of final or pending disciplinary action in any jurisdiction in which applicant is or has been licensed;

(5) Has taken and passed the jurisprudence examination administered by the State Board of Dental Examiners within one year immediately prior to application;

(6) Has passed a national written examination relating to dentistry as certified by the American Dental Association Joint Commission on National Dental Examinations or other examination approved by the SBDE;

(7) Has passed a state or regional general dentistry clinical examination;

(8) Has successfully passed background checks for criminal or fraudulent activities to include information from the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the AADE Clearinghouse for Disciplinary Action;

(9) Submits documentation that applicant is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

(10) Show proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, Section 256.101; and

(11) Submits proof of completion of 12 hours of continuing education taken within the twelve months preceding the date the licensure application is received by the SBDE. All hours shall be taken in accordance with the provisions as cited in rule 104.1 (5)(6) and (7) of this title (relating to Requirements) and rule 104.2 of this title (relating to Providers).

(b) An application for licensure is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application for

licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

(c) A license granted under this section is valid only for practice as an employee of the corporation named on the application.

(d) A dentist holding a temporary license issued under this section may renew the license by submitting an annual application and payment of required fees.

(e) A dentist holding a temporary license may obtain a license under the provision of rule 101.7 of this title (relating to Licensure by Credentials, Dentists) when he/she meets the practice requirements set forth in that rule, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under rule 101.7 of this title (relating to Licensure by Credentials, Dentists) and the application fee charged under this rule.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §101.7

The State Board of Dental Examiners proposes amendments to §101.7, Licensure by Credentials, Dentists. Paragraph (11) is amended to remove references to the Credentials Review Committee of the Board and to replace them with the term "Board." This will allow staff to review and make recommendations directly to the Board concerning applications for licensure by credentials and by eliminating review of all applications by the Committee, will speed the approval process. Paragraphs (12), (13), (1) and (15) are changed to clarify meaning without making any substantive changes.

This rule was reviewed by legal counsel with appropriate grammatical changes reflected pursuant to authorization by the Board in a public meeting in compliance with the Administrative Procedures Act and the Board's rules.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that the rule reflects the process for handling applications for licensure by credentials and that the rule is more clearly worded.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and §256.101(a)(10) which provides the Board with authority to establish rules concerning licensure by credentials.

The proposed amended rule does not affect other statutes, articles, or codes.

§101.7. Licensure by Credentials - Dentists.

The State Board of Dental Examiners will license applicants by credentials upon payment of a fee, in an amount set by the Board, who meet all SBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria:

(1) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association. Dental Schools so accredited are approved by the State Board of Dental Examiners for purposes of licensing their graduates of credentials;[.]

(2) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;[.]

(3) Has practiced dentistry:

(A) For a minimum of five years immediately preceding application to the State Board of Dental Examiners ; or [~~and/or~~]

(B) As a dental educator at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for a minimum of five years immediately preceding application to the State Board of Dental Examiners;[.]

(4) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdiction entity of the current dentist's license and by a certified statement that he/she has current good standing in said jurisdiction;[.]

(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which applicant is or has been licensed;

(6) Has taken and passed the jurisprudence examination administered by the State Board of Dental Examiners within one year immediately prior to application;[.].

(7) Has passed a national written examination relating to dentistry as certified by the American Dental Association Joint Commission on National Dental Examinations or other examination approved by the SBDE;[.]

(8) Has passed a state or regional general dentistry clinical examination;[.]

(9) Has successfully passed background checks for criminal or fraudulent activities to include information from the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the AADE Clearinghouse for Disciplinary Action;

(10) Practice experience described in paragraph (3) of this section must be subsequent to applicant having graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; and[.]

(11) Each candidate for licensure by credentials must submit to the Board [Credentials Review Committee of the Board] the required documents and information prescribed in this rule and other documents or information that may be requested to enable the Board [Committee] to evaluate [appropriately] an application and take appropriate actions. [to make a recommendation to the Board for action on the application.]

(12) Shows proof [Each applicant must show proof] of current CPR certification as required by the Texas Dental Practice Act Chapter 256, Section 256.101.

(13) Submits [Effective September 1, 2000, all applicants must submit] proof of completion of 12 hours of continuing education taken within the twelve months preceding the date the licensure application is received by the SBDE. All hours shall be taken in accordance with the provisions as cited in Rule 104.1 (5)(6) and (7) of this title (relating to Requirements) and Rule 104.2 of this title (relating to Providers).

[(14) Applications must be delivered to the office of the State Board of Dental Examiners.]

(14) [(15)] An application for licensure is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §101.9

The State Board of Dental Examiners proposes new §101.9, Dental Profiles pursuant to the provisions of Senate Bill 187, § 2054.2606 which requires the agency to begin collecting data for use in dental profiles which will be available to the public.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rule is in effect there will be fiscal implications for state government as a result of enforcing or administering the rule. Costs for the program have been estimated by the Department of Information Resources (DIR) to equal $5.00 per licensee which this agency will collect and pass through to DIR.

There will be no fiscal implications for local government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of amending the rule is that the public will have access to more detailed information about all licensed dentists than is currently available.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and Senate Bill 187, § 11, 77th Legislature, 2001, which requires the Board to adopt rules to establish a profile system.

The proposed new rule does not affect other statutes, articles, or codes.

§101.9. Dental Profiles.

(a) Beginning June 1, 2002, all applications for renewals of dental licenses, on a form provided by the State Board of Dental Examiners, must include data to be used to provide to the public a "profile" for each licensed dentist. The profile data form is part of the renewal application and must be completed and all fees paid before the agency will process the renewal application.

(b) When a renewal application is returned to an applicant because it is incomplete or fees are not paid, and the corrected application is received after the applicant's license has expired, statutory penalties, as set forth will be assessed and collected before the license is renewed.

(c) Dentists' profile data to be collected and made available to the public includes the following for each dentist:

(1) Name of license holder;

(2) Primary practice location address or a statement that the dentist does not practice dentistry;

(3) Telephone number at the primary practice location;

(4) Whether patient areas are accessible to disabled persons in compliance with the Americans With Disabilities Act (AwDA);

(5) Whether the dentist accepts insurance;

(6) Whether the dentist is a Medicaid provider;

(7) Whether the dentist provides care under the Children's Health Insurance Program (CHIP) or other state program;

(8) The dental degree held by applicant and the school that conferred it;

(9) Specialty certifications held, if any;

(10) The number of years the dentist has practiced;

(11) Any hospital affiliation(s);

(12) Language translating services available, if any; and

(13) Whether translating services are available for patients with impairment of hearing.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners proposes amendments to §102.1, Fee Schedule to implement increases required to cover additional appropriations in subsection (a)(2) and subsection (b)(2) to add new fees for temporary license by credentials for dentists at subsection (a)(9) and for dental hygienists at subsection (b)(8) and to provide for fees to certify dental assistants to apply and to annually renew certification at subsection (h)(1) and (2).

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be fiscal implications for state government as a result of enforcing or administering the rule. The agency will incur costs for handling temporary license and for dental assistant certifications. Those costs will be covered by the fees assessed.

There will be no fiscal implications for local government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that the agency continues to generate revenues sufficient to cover operating costs.

The fiscal implications for small or large businesses will be minimal. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and §254.004 which requires the agency to establish fees sufficient to cover operating costs and to comply with provisions of House Bill 3507 and Senate Bill 187, 77th Legislature, 2001.

The proposed amended rule does not affect other statutes, articles, or codes.

§102.1. Fee Schedule.

(a) Dentists:

(1) application for licensure by examination:

(A) initial application/examination: $150; and

(B) initial assessment by the Texas Legislature for deposit to the General Revenue Fund: $200.

(2) annual registration: $93.[~~$88.~~]

(3) annual peer assistance: $9.00.

(4) annual assessment by Texas Legislature for deposit to the General Revenue Fund: $200.

(5) application for licensure by credentials: $2,000.

(6) duplicate license: $15.

(7) duplicate renewal certificate: $15.

(8) reactivate a retired license: $250.

(9) application for temporary licensure by credentials: $500.

(b) Dental Hygienists:

(1) application for licensure by examination: $70;

(2) annual registration: $57 [~~$52~~];

(3) annual peer assistance: $2.00;

(4) application for licensure by credentials: $475;

(5) duplicate license: $15;

(6) duplicate renewal certificate: $15; and

(7) reactivate a retired license: $250.

(8) application for temporary licensure by credentials: $100.

(c) Dental laboratories:

(1) initial application: $100; and

(2) annual registration: $100.

(d) Application for faculty member exception tracking (identification) number: $75.

(e) Application for dental intern or resident exception tracking (identification) number: $25.

(f) Mobile Dental Facilities or Portable Dental Units:

(1) initial application: $50; and

(2) annual renewal: $50.

(g) Sedation/Anesthesia Permit Application:

(1) initial application: $28.75; and

(2) annual renewal: $5.00.

(h) Dental Assistants:

(1) application for certificate to apply pit and fissure sealants: $50; and

(2) annual renewal of certificate to apply pit and fissure sealants: $50.

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 October 5, 2001.

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.2

The State Board of Dental Examiners proposes amendments to §103.2, Licensure by Credentials, Dental Hygienists. Two changes are proposed to this rule. The first is to paragraph (3)(A) where five years of practice experience is changed to three years. This change is proposed to implement the provisions of Senate Bill 533, 77th Legislature, 2001, effective September 1, 2001. Paragraph (11) which is amended to remove references to the Credentials Review Committee of the Board and to replace them with the term "Board." This will allow staff to review and make recommendations directly to the Board concerning applications for licensure by credentials and by eliminating review of all applications by the Committee will speed the approval process. Paragraphs (12), (13), (14) and (15) are changed to clarify meaning without making any substantive changes.

This rule was reviewed by legal counsel with appropriate grammatical changes reflected pursuant to authorization by the Board in a public meeting in compliance with the Administrative Procedures Act and the Board's rules.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that the rule reflects the process for handling applications for licensure by credentials and that the rule is more clearly worded.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, §256.101(a)(10) which provides the Board with authority to establish rules concerning licensure by credentials and with Senate Bill 533, 77th Legislature, 2001.

The proposed amended rule does not affect other statutes, articles, or codes.

§103.2. Licensure by Credentials, Dental Hygienists.

The State Board of Dental Examiners will license dental hygiene applicants by credentials upon payment of a fee, in the amount set by the Board, who meet all SBDE and State of Texas minimum applicant requirements, general licensure qualifications, and all of the following criteria:

(1) Has graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association. Dental Hygiene schools so accredited are approved by the State Board of Dental Examiners for purposes of licensing their graduates by credentials;[.]

(2) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;[.]

(3) Has practiced dental hygiene:

(A) For a minimum of three [~~five~~] years immediately preceding application to the State Board of Dental Examiners. An applicant has practiced dental hygiene for three [~~five~~] years if he or she has been actively engaged in practice for at least twenty-six weeks in each of the past three [~~five~~] years preceding application, or [~~and/or~~]

(B) As a dental educator at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for a minimum or five years immediately preceding application to the State Board of Dental Examiners;[.]

(4) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdictional entity of the current dental hygienist's license and by a certified statement that he/she has current good standing in said jurisdiction;[.]

(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which applicant is or has been licensed;[.]

(6) Has taken and passed the jurisprudence examination administered by the State Board of Dental Examiners within one year immediately prior to application;[.]

(7) Has passed a national written examination relating to dental hygiene as certified by the American Dental Association Joint Commission on National Dental Examinations or other examination approved by the SBDE;[.]

(8) Has passed a state or regional general dental hygiene clinical examination;[.]

(9) Is reputable, as demonstrated by at least 2 letters of character reference which have been notarized;[.]

(10) Practice experience described in paragraph [~~subsection~~] (3) of this title must be subsequent to applicant having graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association; and[.]

(11) Each candidate for licensure by credentials must submit to the Board [~~Credentials Review Committee of the Board~~] the required documents and information prescribed in this rule 103.2 and other documents or information that may be requested, to enable the Board [~~Committee~~] to evaluate [~~appropriately~~] an application and take appropriate actions. [~~make a recommendation to the Board for action on the application.~~]

(12) Shows proof [~~Each applicant must show proof~~] of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, Section 256.101.

(13) Submits [~~Effective September 1, 2000, all applicants must submit~~] proof of completion of 12 hours of continuing education taken within the twelve months preceding the date the licensure application is received by the SBDE. All hours shall be taken in accordance with the provisions as cited in Rule 104.1 (5)(6) and (7) of this title (relating to Requirements) and Rule 104.2 of this title (relating to Providers).

~~[(14) Applications must be delivered to the office of the State Board of Dental Examiners.]~~

(14) [~~(15)~~] An application for licensure is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fee. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

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 October 5, 2001.

TRD-200106023
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §103.4

The State Board of Dental Examiners proposes amendments to §103.4, Staggered Dental Hygiene Registrations. The proposed changes are made to cause this rule to reflect changes as proposed to §102.1 Fee Schedule. Paragraphs (2) (A), (3) (A) and (4) (A) are amended to reflect a new fee of $57.00 for renewals of dental hygiene licenses as proposed in §102.1, Fee Schedule. The fee increases are proposed to increase revenues to cover increased appropriations.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule will be that board fee rules will increase fees in amounts sufficient to cover increases in appropriations.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with §254.004 which requires the agency to establish fees sufficient to cover operating costs.

The proposed amended rule does not affect other statutes, articles, or codes.

§103.4. Staggered Dental Hygiene Registrations.

The State Board of Dental Examiners, pursuant to Occupations Code, chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental hygiene license registration periods followed by annual registrations (i.e., renewals).

(1) The initial dental hygiene license registration periods will range from 6 months to 17 months Each dental hygienist for whom an initial dental hygiene license registration is issued will be assigned a computer generated check digit. The length of the initial license registration period will be determined on the basis of the assigned check digit as follows:

(A) a dental hygienist assigned to check digit 1 will be registered for 6 months;

(B) a dental hygienist assigned to check digit 2 will be registered for 7 months;

(C) a dental hygienist assigned to check digit 3 will be registered for 8 months;

(D) a dental hygienist assigned to check digit 4 will be registered for 9 months;

(E) a dental hygienist assigned to check digit 5 will be registered for 11 months;

(F) a dental hygienist assigned to check digit 6 will be registered for 12 months;

(G) a dental hygienist assigned to check digit 7 will be registered for 13 months;

(H) a dental hygienist assigned to check digit 8 will be registered for 14 months;

(I) a dental hygienist assigned to check digit 9 will be registered for 15 months; and

(J) a dental hygienist assigned to check digit 10 will be registered for 17 months.

(2) For individuals who qualify for dental hygiene licensure by examination, the initial dental hygiene license registration fees will be as follows:

(A) an annual license registration fee of $57.00 [~~$42.00~~] prorated according to the number of months in the initial registration period;

(B) $2.00 for peer assistance.

(3) For individuals who qualify for dental hygiene licensure by credentials, the initial dental hygiene license registration fees will be as follows:

(A) an annual license registration fee of $57.00 [~~$42.00~~] prorated according to the number of months in the initial registration period;

(B) $2.00 for peer assistance.

(4) Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of his/her initial dental hygiene license registration period. Pursuant to §102.1(b) of this title (relating to Fee Schedule) the licensee will pay the following fee for each annual registration (i.e., renewal):

(A) a license registration fee of $57.00 [~~$42.00~~]

(B) $2.00 for peer assistance.

(5) Approximately 60 days prior to the expiration date of the initial dental hygiene license registration period, a license renewal notice will be mailed to all dental hygiene licensees who have that expiration date.

(6) A license registration expired for more than one year may not be renewed.

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

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TRD-200106024
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §103.5

The State Board of Dental Examiners proposes new §103.5 Temporary License by Credentials, Dental Hygienists. The new rule will implement the provisions of House Bill 3507, Article 5, 77th Legislature, 2001, which provides that a dental hygienist may obtain a temporary license by credentials without meeting the practice requirement if the dental hygienist works for a nonprofit corporation that accepts Medicaid patients.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the rule is that a clear procedure to implement statutory provisions for temporary licensure will be in effect.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with §256.101 (a)(10) which provides the Board with authority to establish rules governing licensure by credentials and with the provisions of House Bill 3507, Article 5, 77th Legislature, 2001.

The proposed new rule does not affect other statutes, articles, or codes.

§103.5. Temporary License by Credentials, Dental Hygienists.

(a) The State Board of Dental Examiners will issue a temporary license to a dental hygiene applicant, upon payment of a fee, in an amount set by the Board, who meets all SBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria:

(1) Has graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;

(3) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdiction entity of the current dentist's license and by a certified statement that he/she has current good standing in said jurisdiction;

(4) Has not been the subject of final or pending disciplinary action in any jurisdiction in which applicant is or has been licensed;

(5) Has taken and passed the jurisprudence examination administered by the State Board of Dental Examiners within one year immediately prior to application;

(6) Has passed a national written examination relating to dental hygiene as certified by the American Dental Association Joint Commission on National Dental Examinations or other examination approved by the SBDE;

(7) Has passed a state or regional general dental hygiene clinical examination;

(8) Is reputable, as demonstrated by at least two letters of character reference on which signatures have been notarized;

(9) Submits documentation that applicant is currently employed by a corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

(10) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, Section 256.101; and

(11) Submits proof of completion of 12 hours of continuing education taken within the twelve months preceding the date the licensure application is received by the SBDE. All hours shall be taken in accordance with the provisions as cited in rule 104.1 (5)(6) and (7) of this title (relating to Requirements) and rule 104.2 of this title (relating to Providers).

(b) An application for licensure is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

(c) A license granted under this section is valid only for practice as an employee of the corporation named on the application.

(d) A dental hygienist holding a temporary license issued under this section may renew the license by submitting an annual renewal application and payment of required fees.

(e) A dental hygienist holding a temporary license may obtain a license under the provisions of rule 103.2 of this title (relating to Licensure by Credentials, Dental Hygienists) when he/she meets the practice requirements set forth in that rule, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under rule 103.2 of this title (relating to Licensure by Credentials, Dental Hygienists) and the application fee charged under this rule.

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

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Jeffry R. Hill
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State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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CHAPTER 105. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAM

22 TAC §§105.1 - 105.4

The State Board of Dental Examiners proposes new Chapter 105, Alternative Dental Hygiene Training Program and new §105.1, Definitions, §105.2, Licensure Qualifications, §105.3, Requirements for Alternative Dental Hygiene Training Programs, and §105.4, Program Instructors. This new chapter is proposed to implement the provisions of House Bill 3507, §3, 77th Legislature, 2001, which provides for alternative training programs for dental hygienists. The statute requires the agency to develop a program whereby qualified training programs can be approved by the State Board of Dental Examiners. Approval of programs under these rules will allow dental hygiene students to be trained in alternative programs while at the same time the people of Texas can be assured that dental hygienists graduating from such programs have training that is equivalent to dental hygienists who graduate from traditional programs. These new rules were drafted with the intent to implement the recommendations that were made by an advisory committee established by House Bill 3507, Article 3.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rules are in effect there will be no fiscal implications for local government but there will be fiscal implications for state government as a result of enforcing or administering the rule. Additional funds were appropriated to the agency to implement House Bill 3507 and fees have been increased to collect revenue to cover such increases.

Mr. Hill also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of amending the rule is that alternative training programs that are qualified can seek and obtain State Board of Dental Examiners approval, and their graduates after successful completion of all dental hygiene entrance examinations required may become licensed.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rules will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001. A public hearing has been scheduled for November 27, 2001, at 1:00 p.m., 333 Guadalupe, Tower 2, Room 225, Austin, Texas.

The new rules are proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and House Bill 3507, §3, 77th Legislature, 2001, which provides the Board with the authority to adopt rules to implement the program.

The proposed new rules does not affect other statutes, articles, or codes.

§105.1. Definitions.

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

(1) Clinical training -- occurs when a student provides comprehensive dental hygiene care to patients under direct supervision of a dentist or dental hygienist instructor.

(2) Direct supervision -- the dentist responsible for the procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.

(3) Recertification -- instructor calibration accomplished through completion of courses determined by the sponsoring institution of higher education.

(4) Accreditation Eligible -- an accreditation classification granted to any program which is in the planning and early stages of development or an intermediate stage of program implementation. This accreditation classification provides evidence to the educational institutional, a licensing body, the federal government or other granting

agency that, at the time of evaluation, the developing education program appears to have the potential for meeting the standard set forth in the requirements for an accredited educational program for the specific occupational area. The classification "accreditation eligible" must be based upon a site evaluation visit.

§105.2. Licensure Qualifications.

(a) Any person trained by an alternative dental hygiene training program desiring to practice dental hygiene in the State of Texas must possess a license issued by the Texas State Board of Dental Examiners as required by law.

(b) To be eligible for licensure, an applicant must present on or accompanying a form approved by the State Board of Dental Examiners satisfactory proof to the Board that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);

(3) Has graduated from an alternative dental hygiene training program approved by the State Board of Dental Examiners pursuant to this chapter;

(4) Has taken and passed the examination for dental hygienists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations;

(5) Has taken and passed in its entirety the appropriate clinical examination administered by a regional examining board designated by the State Board of Dental Examiners;

(6) Has taken and passed the jurisprudence examination administered by the State Board of Dental Examiners within one year immediately prior to application;

(7) Has successfully completed a current course in basic life support given by the American Heart Association or the American Red Cross; and

(8) Has paid all application/examination and licensing fees required by law and Board rules and regulations.

(c) An application for licensure is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the SBDE along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

§105.3. Requirements for Alternative Dental Hygiene Training Programs.

(a) To become approved and to maintain approval on an alternative training program for dental hygienists, a sponsoring institution of higher education must provide the State Board of Dental Examiners with the following information:

(1) The name of the sponsoring institution of higher education;

(2) A name, or other identifier, for the alternative program;

(3) The name of the Commission on Dental Accreditation (CODA) accredited institution that will provide didactic training for students;

(4) The location or locations where clinical training will be provided;

(5) Proof that the alternative dental hygiene training program has been designated either CODA eligible or CODA accredited;

(6) A statement that no instructor will provide clinical instruction to students enrolled in the program without having first received from the State Board of Dental Examiners a certificate showing that the instructor has met all of the requirements of rule 105.4 of this title (relating to Program Instructors);

(7) A statement, that in addition to students meeting requirements for admission to CODA eligible or CODA accredited programs, each student will meet the following criteria before admission to the alternative training program:

(A) is a graduate of an accredited high school or hold a certificate of high school equivalency;

(B) is at least 18 years of age;

(C) that prior to the date of starting the program (not the date of application), the applicant must have completed a minimum of two year (24 consecutive months) working in a full-time position (28 hours per week) in a dental office performing clinical duties for dental patients; and

(D) has been notified in writing by the program that no license to practice dental hygiene in the State of Texas will be issued by the State Board of Dental Examiners unless the alternative dental hygiene training program is accredited by the Commission on Dental Accreditation. The student shall acknowledge in writing before a notary public certification of receipt of such notification; and

(8) A statement that in addition to requirements that may be imposed by the sponsoring institution, the alternative dental hygiene training program will require its graduates have completed the following:

(A) a minimum of four semesters of didactic education from an institution of higher education in Texas accredited by a regional accrediting agency approved by the US Department of Education;

(B) didactic education shall occur by one or more of the following methodologies: classroom instruction, distance learning, remote coursework or similar modes of instruction;

(C) didactic courses shall include instruction in anatomy, pharmacology, radiography, hygiene, ethics, jurisprudence and any other subject regularly taught in programs in dental hygiene accredited by the Commission on Dental Accreditation;

(D) clinical training of 1000 hours during a period of 12 consecutive months under the direct supervision of a dentist or dental hygienist who has been registered as an instructor by the Board. The clinical training shall be appropriately documented the same as required for all accredited dental hygiene training programs;

(E) seventy-five full mouth prophylaxes; and

(F) demonstrate the ability to accurately record the location and extent of dental restorations, chart mobility, furcations, gingival recession, keratinized gingiva, and pocket depth on six aspects of each tooth.

(b) Clinical training may occur simultaneously with didactic education.

(c) The program must require that all instructors meet requirements of rule 105.4 of this title (relating to Program Instructors).

(d) The dental hygiene student participating in the alternative dental hygiene training program may not receive a salary or other compensation for providing dental hygiene services as part of clinical training in the dental hygiene alternative training program.

§105.4. Program Instructors.

(a) Dentist Instructors.

(1) The State Board of Dental Examiners will register a dentist to instruct dental hygiene students in an alternative dental hygiene training program, upon payment of a fee in an amount set by the Board and completion of a registration form provided by the board indicating that applicant meets all of the following criteria:

(A) Is licensed in Texas, and has practiced in Texas for five of the seven years preceding the date of the application;

(B) Has not been the subject of any disciplinary action(s) or order(s) of the Board;

(C) Has a faculty appointment from the sponsoring institution of higher education;

(D) Has successfully completed a Calibration Course from the program's sponsoring institution of higher education; and

(E) Is currently practicing in either:

(i) A dental office located outside a standard metropolitan statistical area, as defined by the U.S. Census Bureau; or

(ii) In an area that the Texas Department of Health has determined is underserved or an area that has been designated by the U.S. Department of Health and Human Services as having a shortage of dental professionals.

(2) Each registered dentist instructor is responsible for the following:

(A) Prominent display in clear view of all patients of his/her practice the following statement: "This practice has been approved as an alternative dental hygiene training program. Therefore, students in the program may be performing services";

(B) Obtain and maintain a written informed consent signed by all patients treated in the program that states the following:

(i) On the date I made my dental hygiene care appointment I was informed that the services will be performed by a student in an alternative dental hygiene training program;

(ii) I understand that Dr. (name of dentist) is registered with the State Board of Dental Examiners as an instructor in a Board approved alternative dental hygiene training program in dental hygiene;

(iii) I understand that (name of dental hygienist), RDH is registered with the State Board of Dental Examiners as an instructor in a Board approved alternative dental hygiene training program working under the direct supervision of Dr. (name of dentist);

(iv) I understand that my dental hygiene care on (date of service) is being provided by a student in an alternative dental hygiene training program affiliated with (name of sponsoring institution of higher education); and

(v) I understand that my dental records may be reviewed by representatives of the institution of higher education sponsoring the Commission on Dental Accreditation (CODA) accredited alternative dental hygiene training program;

(C) Informing all patients at the time the dental hygiene care appointment is made that the individual providing such dental hygiene care is a student in a CODA accredited alternative dental hygiene training program;

(D) All tasks and procedures performed by, or services provided to a patient by a student on behalf of the program; and,

(E) Successful completion of a Calibration Course from the sponsoring institution of higher education every three years, and submission of proof of such completion to the Board.

(b) Dental Hygienist Instructors.

(1) The State Board of Dental Examiners will register a dental hygienist to instruct dental hygiene students in an alternative dental hygiene training program upon payment of a fee in an amount set by the Board and completion of a registration form provided by the Board indicating that the applicant meets all of the following criteria:

(A) Is licensed in Texas, and has practiced in Texas for five years preceding the training;

(B) Has not been the subject of any disciplinary action(s) or order(s) of the Board;

(C) Has a faculty appointment from the sponsoring institution of higher education;

(D) Has successfully completed a Calibration Course from the program's sponsoring institution of higher education; and

(E) Is employed by and works under the direct supervision of a dentist who is registered as an instructor with the Board pursuant to subsection (a) of this section.

(2) Every three years, each registered dental hygienist instructor must successfully complete a Calibration Course from the sponsoring institution of higher education and submit proof of such completion to 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 October 5, 2001.

TRD-200106030
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-7452

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.3

The State Board of Dental Examiners proposes new §114.3 Application of Pit and Fissure Sealants The new rule is proposed to implement the provisions of House Bill 3507, Article 4, 77th Legislature, 2001, which provides that dentists may delegate the application of pit and fissure sealants to dental assistants who meet certain qualifications.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the rule is that the agency will have an established

procedure in place to certify dental assistants who are qualified, and agency rules will address procedures for dentists to delegate the procedures.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with the provisions of House Bill 3507, Article 4, 77th Legislature, 2001.

The proposed new rule does not affect other statutes, articles, or codes.

§114.3. Application of Pit and Fissure Sealants.

(a) A Texas licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant:

(1) is employed by and works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (d) of this section.

(b) In addition to application of pit and fissure sealants a dental assistant certified in this section may use a rubber prophylaxis cup and appropriate polishing materials to cleanse the occlusal and smooth surfaces of teeth that will be sealed. Cleansing is intended only to prepare the teeth for the application of sealants and should not exceed the amount needed to do so.

(c) The dentist may not bill for a cleansing provided hereunder as a prophylaxis.

(d) A dental assistant wishing to obtain certification must pay an application fee set by Board rule and on a form prescribed by the Board must provide proof of the following:

(1) at least two years of experience as a dental assistant;

(2) completion of a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through an accredited dental hygiene program approved by the Board whose course of instruction includes:

(A) infection control;

(B) cardiopulmonary resuscitation;

(C) treatment of medical emergencies;

(D) microbiology;

(E) chemistry;

(F) dental anatomy;

(G) ethics related to pit and fissure sealants;

(H) jurisprudence related to pit and fissure sealants; and

(I) the correct application of sealants, including the actual clinical application of sealants; and

(3) Submit proof that applicant has successfully completed a current course in basic life support given by the American Heart Association or the American Red Cross.

(e) Before January 1 of each year, dental assistants certified hereunder who wish to renew their certifications must pay a renewal fee set by Board rule and must provide proof of the following:

(1) completion of at least six hours of continuing education in technical and scientific coursework annually. The terms technical and scientific as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(A) Dental assistants shall select and participate in continuing education courses offered by or endorsed by dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or

(B) by nationally recognized dental, dental hygiene or dental assisting organizations.

(C) No more than three hours may be in self-study; and

(2) Submit proof that applicant has successfully completed a current course in basic life support given by the American Heart Association or the American Red Cross.

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 October 5, 2001.

TRD-200106026
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.5

The State Board of Dental Examiners proposes new §115.5, Practicing in long term care facilities and school based health centers. This new rule is proposed to implement the provisions of House Bill 3507, Article 4, 77th Legislature, 2001, which provides that dentists may delegate to qualified dental hygienists the authority to treat patients in certain types of locations without the dentist having seen the patient.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the new rule is in effect there will be fiscal implications for state government as a result of enforcing or administering the rule. The Legislature appropriated funds to the agency for this function and fees have been increased to cover such costs.

There will be no fiscal implications for local government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the rule is that agency rules will provide a procedure to implement statutory provisions.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed new rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and with the provisions of House Bill 3507, Article 4, 77th Legislature, 2001 which provides for the procedures and with §262.102 which provides that the Board may adopt and enforce rules necessary to regulate dental hygienists.

The proposed new rule does not affect other statutes, articles, or codes.

§115.5. Dental Hygienists practicing in long term care facilities and school-based health centers.

(a) A dentist may delegate to a Texas licensed dental hygienist authorization to perform a service, task or procedure for patients whom the dentist has not seen within the past twelve months when conditions are met as follows:

(1) The dentist provides express authorization in writing which must include

(A) the dentist's name;

(B) the dental hygienist's name;

(C) the patient's name;

(D) the name and address of the location where service is to be provided;

(E) the date of the authorization; and

(F) those procedures necessary to allow subsequent clinical evaluation by a dentist;

(2) The dentist has verified that the dental hygienist has at least two years experience as a dental hygienist; and

(3) The service, task or procedure must be performed in either:

(A) a nursing facility as defined in the Health and Safety Code, Section 242.301; or

(B) a school-based health center as defined by the Education Code, Section 38.011, as amended by Chapter 1418, Acts of the 76th Legislature, Regular Session.

(b) The dental hygienist must refer patients treated under the provisions of this rule to a dentist by notification in writing of the dentist's name and address. Such notification must be provided to the patient or a person legally responsible for the patient, the authorizing dentist, the referral dentist, and copies to the patient's medical record. This notification must include a statement of services, tasks, and procedures performed.

(c) A dental hygienist, after having performed the services, tasks or procedures under this rule, may not provide a second set of services, tasks or procedures for the patient until the patient has been seen by either the dentist who delegated to the hygienist the authority or by a dentist to whom the patient was referred.

(d) The nursing facility or school-based health center must agree to include information provided pursuant to subsection (b) of this section in the patient's medical records.

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 October 5, 2001.

TRD-200106027
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §115.20

The State Board of Dental Examiners proposes amendments to §115.20, Dental Hygiene Advisory Committee - Purpose and Composition. Subsection (a) is amended to update statutory references to the current code; new subsection (b) is added to provide for staggered six year terms and that appointees may serve only one full term, and a new subsection (e) providing that members are entitled to per diem and travel expenses. The changes made implement provisions of Senate Bill 533, 77th Legislature, 2001.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the amended rule is in effect there will be fiscal implications for state government as a result of enforcing or administering the rule. Costs for per diem for committee members will add to operational costs for the agency.

There will be no fiscal implications for local government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule is the rule will be consistent with the statutes.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas

78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before November 19, 2001.

The amendment is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry and §262.056 and §262.102.

The proposed amendment does not affect other statutes, articles, or codes.

§115.20. Dental Hygiene Advisory Committee--Purpose and Composition.

(a) The Dental Hygiene Advisory Committee is established pursuant to Texas Civil Statutes, Section 262.054 [~~Article 4551e, §4A,~~] for the purpose of advising the Board on matters relating to dental hygiene.

(b) Members of the advisory committee serve staggered six-year terms. A member may serve only one-six year term.

(c) [~~(b)~~] The Board shall annually evaluate the Committee's work, its usefulness, and the costs related to the Committee's work to include agency staff time in support of the Committee's activities. [~~Reimbursement of costs shall be determined as set out in the General Appropriations Act and under Article 4551e, §4A.~~]

(d) [~~(c)~~] The Committee shall elect from among its members a presiding officer who shall serve for one year and who shall report to the Board on Committee activities as may be required but no less often than annually.

(e) An advisory committee member is entitled to the per diem set by the General Appropriations Act and may receive reimbursement for travel expenses, including expenses for meals and lodging.

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 October 5, 2001.

TRD-200106028
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6400

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 403. OTHER AGENCIES AND THE PUBLIC

SUBCHAPTER B. CHARGES FOR COMMUNITY-BASED SERVICES

25 TAC §§403.41 - 403.53

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services. New §§412.101 - 412.115 of Chapter 412, Subchapter C, concerning charges for community services, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new and more current rules governing the same matters. The proposal would also fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to costs or revenues of the state or local governments.

Sam Shore, director, Behavioral Health Services, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the adoption of new and more current rules governing the same matters. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

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

It is not anticipated that the proposed repeals will have an adverse economic effect on small businesses or micro-businesses because the proposed repeals do not place requirements on small businesses or micro-businesses.

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

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

§403.41. Purpose.
§403.42. Application.
§403.43. Definitions.
§403.44. Principles.
§403.45. Financial Assessment.
§403.46. Determination of Ability to Pay.
§403.47. Rates.
§403.48. Billing Procedures.
§403.49. Monthly Ability-to-Pay Fee Schedule.
§403.50. Training.
§403.51. Information for Persons.
§403.52. References.

§403.53. Distribution.

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 October 8, 2001.

TRD-200106038
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 206-5216

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CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES
SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §§412.101 - 412.115

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§412.101 - 412.115 of new Chapter 412, Subchapter C, concerning charges for community services. The repeals of §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services, which the new sections would replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new rules describe TDMHMR's uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue as required by the Texas Health and Safety Code, §534.067.

Although the proposed new rules would add several new requirements for local authorities and others, the overall policy for charging for community services in the proposed new rules is not significantly different from the policy contained in the rules proposed for repeal. A substantive new provision is the requirement for parents of minor children seeking or receiving services to enroll their children in Medicaid or the Childrens Health Insurance Program (CHIP) or provide documentation that they have been denied or that their enrollment is pending. Another substantive new provision is the requirement for adults seeking or receiving services to apply for Supplemental Security Income (SSI) in order to become eligible for Medicaid or provide documentation that they have been denied or that their application is pending.

A new provision that would affect persons receiving services as well as local authorities is the process for referring persons to their third-party coverage when their third-party coverage will not pay the local authority for services because the local authority does not have an approved provider on its network. The process includes notifying the person of the local authority's intent to refer and providing the person with an opportunity to appeal. The person is also offered the opportunity to request a review of the appeal decision. Another new provision that would affect persons receiving services and local authorities is the process that allows the local authority to involuntarily reduce or terminate a person's services for non-payment. The process provides safeguards and includes the same prior notification, and appeal and review opportunities as the process for referring a person to his/her third-party coverage.

The proposed new rules also contain extensive clarification of TDMHMR's policy for charging for community services, including stating that earned revenues are optimized and that TDMHMR is the payer of last resort; requiring local authorities to identify and access, and assist persons (and parents) in identifying and accessing, available funding sources other than TDMHMR; describing the process for billing third-parties and persons (and parents); and stating that persons (and parents) are responsible for paying all charges owed and that local authorities are responsible for making reasonable efforts to collect payments from all available funding sources.

Although the subchapter proposed for repeal states that the Monthly Ability-To-Pay Fee Schedule is based on 150% of the current Federal Poverty Guidelines, the current fee schedule actually *begins charging for services* at 150% of the current Federal Poverty Guidelines *for a family of one person*. This current calculation results in families of two or more being charged a higher percentage of their income than families of one. The proposed new rules would continue to state that the Monthly Ability-To-Pay Fee Schedule is based on 150% of the current Federal Poverty Guidelines; however, the fee schedule calculation would be revised to begin charging for services at 150% of the current Federal Poverty Guidelines for a family of two persons, three persons, four persons, and so on. For example, 150% of the 2001 Federal Poverty Guidelines for a family of two is $17,415. A family of two whose annual income is less than $17,415 would have a maximum monthly fee of zero. A family of two whose annual income is more than $17,415 would have a maximum monthly fee of greater than zero. The revised fee schedule would also be calculated using slightly smaller increments between each annual/monthly gross income level.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the sections does not have foreseeable implications relating to costs or revenues of the state government. There will be some impact to revenues of local governments (i.e., local mental health and mental retardation authorities) due to revisions in the fee schedule's calculation; however, the extent of the impact cannot be determined because TDMHMR does not require local authorities to report consumer fee collection data based on income levels. Although the revised fee schedule has slightly smaller increments between each monthly gross income level, the maximum monthly fee amounts for a family size of one closely resemble the fee amounts for a family size of one at the same income level in the existing fee schedule. Additionally, in the existing fee schedule the same fee amounts that are calculated for a family size of one are applied to a family size of two, except the column of amounts shifts down one row to begin charging at the next higher income level, and the process continues for a family size of three, family size of four, and so on. In the revised fee schedule, the family size of one fee amounts are also applied to all other family sizes except the column of amounts shifts down *three* rows to begin charging at the income level that represents 150% of Federal Poverty Guidelines for that family size. While the revised calculation could have a negative fiscal impact on the revenues of local governments, because families of two or more persons will not be charged a fee until family income is 150% of Federal Poverty Guidelines, other provisions in the new rules may offset the negative impact. The new rules require parents to enroll their children in Medicaid

or CHIP; require adults to apply for SSI; state that persons (and parents) are responsible for paying all charges owed and that local authorities are responsible for making reasonable efforts to collect payments from all available funding sources; and require local authorities to identify and access, and assist persons (and parents) in identifying and accessing, available funding sources other than TDMHMR.

Sam Shore, director, Behavioral Health Services, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected is the implementation of a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed sections because the sections do not place additional requirements related to costs on such persons than those in the sections proposed for repeal.

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

It is not anticipated that the proposed sections will have an adverse economic effect on small businesses or micro-businesses because the sections do not place additional requirements on small or micro-businesses than those in the sections proposed for repeal.

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

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

§412.101. Purpose.

The purpose of this subchapter is to comply with the Texas Health and Safety Code, §534.067, by establishing a uniform fee collection policy for local authorities that:

(1) is equitable;

(2) provides for collections; and

(3) maximizes contributions to local revenue.

§412.102. Application.

(a) This subchapter applies to all local authorities for community services contracted for through the performance contract that the authority provides directly or through subcontractors to members of the priority population. This subchapter also applies to persons in the priority population, and parents of persons under age 18 years in the priority population, who are seeking or receiving services.

(b) This subchapter does not apply to:

(1) programs and services that are prohibited by statute or regulation from charging fees to persons served (e.g., Early Childhood Intervention Program);

(2) the TDMHMR In-Home and Family Support Program;

(3) inpatient services in a state MH facility and non-crisis residential services as described in the performance contract; and

(4) specialized services mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90, for preadmission screening and annual resident reviews (PASARR) provided to non-Medicaid eligible persons.

(c) In this subchapter all references to a parent means the requirement is applicable to the parent of a person under age 18 years who is in the priority population and who is seeking or receiving services.

§412.103. Definitions.

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

(1) Ability to pay - The person has third-party coverage that will pay for needed services, the person's maximum monthly fee is greater than zero, or the person has identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(2) Community services or services - Except for inpatient services in a state MH facility and non-crisis residential services, the required and optional mental health and mental retardation services described in the performance contract, including:

(A) 24-hour emergency screening and rapid crisis stabilization services;

(B) community-based crisis residential services or inpatient services in a mental health facility that is not a state MH facility;

(C) community-based assessments, including the development of interdisciplinary treatment plans, and diagnosis and evaluation services;

(D) family support services, including respite care;

(E) case management services (service coordination);

(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(3) Extraordinary expenses - Major medical or health related expenses, major casualty losses, and child care expenses for the previous year or projections for the next year.

(4) Family members -

(A) For an unmarried person under the age of 18 years - The person, the person's parents, and the dependents of the parents, if residing in the same household;

(B) For an unmarried person age 18 years or older - The person and his/her dependents;

(C) For a married person of any age - The person, his/her spouse, and their dependents.

(5) Gross income - Revenue from all sources before taxes and other payroll deductions.

(6) Inability to pay - The person's maximum monthly fee is zero and the person:

(A) does not have third-party coverage;

(B) has third-party coverage, but has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(7) Income-based public insurance - Government funded third-party coverage that bases eligibility on income (i.e., Medicaid and CHIP).

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

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

(10) Person - A person in the priority population who is seeking or receiving services through a local authority.

(11) Priority population - Those groups of persons with mental illness or mental retardation identified in TDMHMR's current strategic plan as being most in need of mental health and mental retardation services.

(12) Standard charge - A fixed price for a community service or unit of service.

(13) State MH facility - A state hospital or a state center with an inpatient component.

(14) Team - The interdisciplinary team, multidisciplinary team, or treatment team.

(15) Third-party coverage - A public or private payer of community services for a specific person that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, TRICARE).

§412.104. Principles.

TDMHMR supports the following principles:

(1) Persons are charged for services based on their ability to pay.

(2) Procedures for determining ability to pay are fair, equitable, and consistently implemented.

(3) Paying for services in accordance with his/her ability to pay reinforces the role of the person as a customer.

(4) Earned revenues are optimized.

(5) TDMHMR is the payer of last resort.

§412.105. Accountability.

(a) Prohibition from denying services. Local authorities are prohibited from denying services to a person:

(1) because of the person's inability to pay for the services;

(2) in a crisis or emergency because:

(A) a financial assessment has not been completed;

(B) financial responsibility has not been determined;

(C) the person has a past-due account; or

(D) the person had his/her services involuntarily reduced or terminated for non-payment under §412.109(d) of this title (relating to Payments, Collections, and Non-payment); or

(3) pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsections (c), (d), (e), and (g) of this section.

(b) Identifying funding sources. Local authorities are responsible for identifying and accessing available funding sources other than TDMHMR, and for assisting persons (and parents) in identifying and accessing available funding sources other than TDMHMR, to pay for services. Available funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Requirement for parents to enroll their children in income-based public insurance. Parents of children who may be eligible for Medicaid or the Childrens Health Insurance Program (CHIP) must enroll their children in Medicaid or CHIP or provide documentation that they have been denied Medicaid or CHIP benefits or that their Medicaid or CHIP enrollment is pending. The local authority shall provide assistance as needed to facilitate the enrollment process.

(d) Financial documentation. If requested by the local authority, persons (or parents) must provide the following financial documentation:

(1) annual or monthly gross income/earnings, if any;

(2) extraordinary expenses (as defined) paid during the past 12 months or projected for the next 12 months;

(3) number of family members (as defined); and

(4) proof of any third-party coverage.

(e) Authorizing third-party coverage payment to the local authority. Persons (and parents) with third-party coverage must execute an assignment of benefits authorizing third-party coverage payment to the local authority.

(f) Failure to comply.

(1) Except as provided by paragraph (2) of this subsection, if the person (or parent) fails to comply with any requirement in subsections (c)-(e) of this section, then the local authority will charge the person (or parent) the standard charge(s) for services. If, within 30 days after the person (or parent) initially failed to comply, the person (or parent) complies with the requirements, then the local authority will adjust the person's account to retroactively reflect compliance.

(2) The local authority will not charge the person the standard charge(s) for services if the local authority makes a decision, based on a clinical determination that is documented and includes input from the person's team, that the person's failure to comply is related to the person's mental illness or mental retardation. The clinical determination must be reassessed at least every three months. If the local authority decides that a person's failure to comply is related to the person's mental illness or mental retardation, then the local authority must develop and implement a plan to reduce or eliminate the barriers related to the person's failure to comply.

(g) Requirement for adult persons to apply for SSI to become eligible for Medicaid. Adult persons who may be eligible for Medicaid must apply for Supplemental Security Income (SSI) or provide documentation that they have been denied SSI or that their SSI application is pending. The local authority shall provide assistance as needed to facilitate all aspects of the application process. If the adult person is unable to act in accordance with the requirement because of the person's mental illness or mental retardation, then the local authority must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.

§412.106. Determination of Ability to Pay.

(a) Financial assessment. The local authority must conduct and document a financial assessment for each person within the first 30 days of services. The local authority must update each person's financial assessment at least annually and whenever significant financial changes occur as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Accountability), which represents the finances of the:

(1) person who is age 18 years or older and the person's spouse; or

(2) parents of the person who is under age 18 years.

(b) Maximum monthly fee. A person's maximum monthly fee is based on the financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit A in §412.113 of this title (relating to Exhibit). The calculation is based on the number of family members and annual gross income, reduced by extraordinary expenses paid during the past 12 months or projected for the next 12 months. No other sliding scale is used.

(1) A maximum monthly fee that is greater than zero is established for persons who are determined as having an ability to pay. If two or more members of the same family are receiving services, then the maximum monthly fee is for the family.

(2) A maximum monthly fee of zero is established for persons who are determined as having an inability to pay.

(c) Third-party coverage.

(1) Third-party coverage that will pay. A person with third-party coverage that will pay for needed services is determined as having an ability to pay for those services.

(2) Third-party coverage that will not pay.

(A) If the person's third-party coverage will not pay for needed services because the local authority does not have an approved provider on its network, then the local authority will propose to refer the person to his/her third-party coverage to identify a provider for which the third-party coverage will pay unless:

(i) the local authority is identified as being responsible for providing court-ordered outpatient services to the person;

(ii) the local authority is able to negotiate adequate payment for services with the person's third-party coverage; or

(iii) the person (or parent) voluntarily agrees to pay the standard charge(s) for the needed service(s).

(B) If the local authority proposes to refer the person to his/her third-party coverage as described in paragraph (2)(A) of this subsection, then the local authority will provide written notification to the person (or parent) in accordance with §412.109(e)(1) of this title (relating to Payments, Collections, and Non-payment), which provides an opportunity to appeal. The local authority must also comply with §412.109(e)(2)-(3) as initiated by the person (or parent).

(C) If the local authority refers the person to his/her third-party coverage, then the local authority will assist the person (or parent) in identifying a provider for which the third-party coverage will pay.

(D) If a person who has been referred to his/her third-party coverage is unable to identify or access needed services from an approved provider or if access will be unduly delayed, then the local authority will:

(i) assist the person (or parent) in resolving the matter with the third-party coverage (e.g., contacting customer service at the third-party coverage, filing a complaint with the third-party coverage or the Texas Department of Insurance); and

(ii) if clinically indicated, ensure the provision of the needed services to the person pending resolution.

(E) The local authority will maintain documentation of:

(i) all referrals as described in paragraph (2)(C) of this subsection;

(ii) all assistance as described in paragraph (2)(D)(i) of this subsection; and

(iii) whether the person received services pending resolution as described in paragraph (2)(D)(ii) of this subsection.

(d) Social Security work incentive provisions. A person who identified payment for specific needed services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*) is determined as having an ability to pay for the specific services. Persons are not required to identify payment for any service for which they may be eligible as part of their approved plan for utilizing the Social Security work incentive provisions.

(e) Notification. After a financial assessment is conducted, the local authority must provide written notification to the person (or parents) that includes:

(1) the determination of whether the person (or parent) has an ability or an inability to pay;

(2) a copy of the financial assessment form that is signed by the person (or parent) and a copy of the Monthly Ability-to-Pay Fee Schedule, with the applicable areas indicated (i.e., annual gross income, number of household members);

(3) the amount of the maximum monthly fee;

(4) the name and phone number of at least one local authority staff who the person (or parent) may contact during office hours to discuss the information contained in the written notification; and

(5) a statement that the person (or parent) may voluntarily pay more than the maximum monthly fee.

§412.107. Standard Charges.

Each local authority must establish, at least annually, a reasonable standard charge for each community service as indicated in the performance contract that is based on costs and calculated using a TDMHMR-approved costing methodology.

§412.108. Billing Procedures.

(a) Monthly account.

(1) The local authority will maintain a monthly account for each person that lists all services provided to the person during the month and the standard charges for the services. Each service listed will indicate whether the service is:

(A) covered by third-party coverage that is not income-based public insurance;

(B) covered by third-party coverage that is income-based public insurance;

(C) not covered by third-party coverage; or

(D) identified for payment in the person's approved plan utilizing Social Security work incentive provisions.

(2) If a person has exceeded the maximum third-party coverage benefit of a particular covered service, then that service is indicated as not covered by third-party coverage.

(b) Accessing funding sources. The local authority must access all available funding sources before using TDMHMR funds to pay for a person's services. Funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Billing third-party coverage. The local authority will bill the person's third-party coverage the monthly account amount for covered services. If the local authority has a contract with the third-party coverage, then the local authority may bill the third-party coverage the contracted reimbursement amount for covered services.

(d) Billing the person (or parents).

(1) No third-party coverage. If the monthly account amount for services not covered by third-party coverage:

(A) exceeds the person's maximum monthly fee (MMF), then the amount is reduced to equal the MMF and the local authority bills person (or parent) the MMF; or

(B) is less than the person's MMF, then the local authority bills the person (or parent) the monthly account amount for services not covered by third-party coverage.

(2) Third-party coverage that is not income-based public insurance.

(A) The following amounts are added to equal the total amount applied toward the person's MMF:

(i) the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by third-party coverage that is not income-based public insurance;

(ii) the amount the third-party coverage was billed but did not pay because the deductible hasn't been met; and

(iii) the monthly account amount for services not covered by third-party coverage.

(B) If the total amount applied toward the person's MMF as described in paragraph (2)(A) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the local authority bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the local authority bills the person (or parent) the total amount applied toward the MMF.

(3) Third-party coverage that is income-based public insurance (i.e., CHIP and Medicaid).

(A) If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by third-party coverage that is income-based public insurance exceeds the person's MMF, then the local authority bills the person (or parent) all applicable co-payments and deductibles.

(B) If the amount of all applicable co-payments, co-insurance, and deductibles does not exceed the person's MMF, then the following amounts are added to equal the total amount applied toward the person's MMF:

(i) the amount of all applicable co-payments and deductibles; and

(ii) the monthly account amount for services not covered by third-party coverage.

(C) If the total amount applied toward the person's MMF as described in paragraph (3)(B) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the local authority bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the local authority bills the person (or parent) the total amount applied toward the MMF.

(D) If the person (or parent) produces official documentation that he/she has reached his/her annual cost-sharing limit, then the local authority will not bill the person (or parent) any co-payments or deductibles for covered services for the remainder of the policy-year.

(4) Social Security work incentive provisions.

(A) If the person identified a payment amount for specific services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*), then the local authority bills the person the monthly account amount for the specific services up to the identified payment amount. If the monthly account amount for the specific services is greater than the identified payment amount, then the remaining balance is applied toward the person's MMF.

(B) The following amounts are added to equal the total amount applied toward the person's MMF:

(i) any remaining balance as described in paragraph (4)(A) of this subsection; and

(ii) the monthly account amount for services not covered by third-party coverage.

(C) If the total amount applied toward the person's MMF as described in paragraph (4)(B) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the local authority bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the local authority bills the person (or parent) the total amount applied toward the MMF.

(e) Statements.

(1) The local authority will send to persons (and parents) who have been determined as having the ability to pay monthly or quarterly statements that include:

(A) an itemized list, at least by date and by type, of all services provided during the period;

(B) the standard charge for each service;

(C) the total charge for the period;

(D) the amount paid (or to be paid) by each funding source; and

(E) the amount to be paid by the person (or parent).

(2) Unless requested otherwise, the local authority does not send statements to persons (or parents) who have an ability to pay if they maintain a zero balance (i.e., the person (or parent) does not currently owe any money).

(3) Unless requested otherwise, the local authority does not send statements to persons (or parents) who have an inability to pay.

§412.109. Payments, Collections, and Non-payment.

(a) Payment and collection.

(1) Persons (and parents) are responsible for promptly paying all charges owed to the local authority.

(2) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the local authority may arrange for the person (or parent) to pay a lesser amount each month. Although the person (or parent) may pay a lesser amount each month because a portion of the charges will be deferred, the person (or parent) is still responsible for paying all charges owed.

(3) Local authorities are responsible for making reasonable efforts to collect payments from all available funding sources before accessing TDMHMR funds to pay for persons' services.

(b) Receipts. Local authorities must provide a receipt for each cash payment.

(c) Discontinuing charges for services not covered by third-party coverage. If the local authority makes a decision, based on a clinical determination that is documented and includes input from the person's team, that being charged for services not covered by third-party coverage and receiving statements will result in a reduction in the functioning level of the person or the person's (or parent's) refusal or rejection of the needed services, then the local authority may discontinue charging the person (or parent) for services not covered by third-party coverage and stop sending statements. The clinical determination must be reassessed at least every three months. If the local authority decides to discontinue charging the person (or parent) for services not covered by third-party coverage, then the local authority must develop and implement a plan to address the issues related to the person's functioning level or the person's (or parent's) refusal or rejection of the needed services.

(d) Involuntary reduction or termination of services for non-payment by person (or parent).

(1) The local authority will address the past-due account of a person (or parent) who is not making payments to ensure reasonable efforts to secure payments are initiated with the person (or parent). For example, if the local authority determines that non-payment is related to financial hardship, then the local authority may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a)(2) of this section or if the local authority makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is related to the person's mental illness or mental retardation, then the person's treatment/service plan may be modified to address the non-payment.

(2) If the local authority makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is not related to the person's mental illness or mental retardation and, despite reasonable efforts to secure payment, the person (or parent) does not pay, then the local authority may propose to involuntarily reduce or terminate the person's services. The local authority may not propose to involuntarily reduce or terminate the person's services if it is clinically contraindicated or the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(3) If the local authority proposes to involuntarily reduce or terminate the person's services, then the local authority must:

(A) maintain clinical documentation that the proposed action is not clinically contraindicated; and

(B) provide written notification to the person (or parent) in accordance with subsection (e)(1) of this section and comply with subsection (e)(2)-(3) as initiated by the person (or parent).

(e) Notification, Appeal, and Review.

(1) Notification. The local authority will notify the person (or parent) in writing of the proposed action (i.e., to involuntarily reduce or terminate the person's services or refer the person to his/her third-party coverage) and provide the person (or parent) an opportunity to appeal the proposed action in accordance with §401.464 of this title (relating to Notification and Appeals Process). The notification will describe the time frames and process for requesting an appeal and include a copy of this subchapter. If the local authority proposes to involuntary reduce or terminate Medicaid services to a person who is a Medicaid recipient, then the local authority must also notify the person of his/her right to request a fair hearing in accordance with Chapter 419, Subchapter G of this title (concerning Medicaid Fair Hearings). If the person (or parent) requests an appeal within the prescribed time frame, then the local authority may not take the proposed action while the appeal is pending. The local authority may take the proposed action if the person (or parent) does not request a review within the prescribed time frame.

(2) Appeal and appeal decision. The appeal is conducted in accordance with §401.464(g) of this title (relating to Notification and Appeals Process). The local authority will notify the person (or parent) in writing of the appeal decision in accordance with §401.464(h) and provide the person (or parent) an opportunity to have the appeal decision reviewed by the Office of Consumer Services and Rights Protection - Ombudsman at TDMHMR Central Office if the person (or parent) is dissatisfied with the appeal decision. The notification must describe the time frames and process for requesting a review.

(3) Review of appeal decision. If the person (or parent) is dissatisfied with the appeal decision, then the person (or parent) may request a review by the Office of Consumer Services and Rights Protection - Ombudsman at TDMHMR Central Office. A request for review must be submitted to the Office of Consumer Services and Rights Protection - Ombudsman, TDMHMR, P.O. Box 12668, Austin, TX 78751, within 10 working days of receipt of the appeal decision. If the person (or parent) requests a review within the prescribed time frame, then the local authority may not take the proposed action while the review is pending. The local authority may take the proposed action if the person (or parent) does not request a review within the prescribed time frame and the appeal decision upholds the decision to take the proposed action.

(A) A person (or parent) who requests a review may choose to have the reviewer conduct the review:

(i) by telephone conference with the person (or parent) and a representative from the local authority and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the local authority; or

(ii) by making a decision based solely upon documents provided by the person (or parent) and the local authority without the presence of any of the parties involved.

(B) The review:

(i) will be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for

review unless an extension is granted by the director of the Office of Consumer Services and Rights Protection - Ombudsman;

(ii) will include an examination of the pertinent information concerning the proposed action and may include consultation with TDMHMR clinical staff and staff who are responsible for the policy contained in this subchapter;

(iii) will result in a final decision which will uphold, reverse, or modify the original decision to take the proposed action; and

(iv) is the final step of the appeal process for involuntarily reducing or terminating the person's services for non-payment and for referring the person to his/her third-party coverage.

(C) Within five working days after the review, the reviewer will send written notification of the final decision to the person (or parent) and the local authority.

(D) The local authority will take appropriate action consistent with the final decision.

(f) Prohibition of financial penalties. The local authority may not impose financial penalties on a person (or parent).

(g) Debt collection. Local authorities must make reasonable efforts to collect debts before an account is referred to a debt collection agency. Local authorities must document their efforts at debt collection.

(1) Local authorities must incorporate into a written agreement or contract for debt collection provisions that state that both parties shall:

(A) maintain the confidentiality of the information and not disclose the identity of the person or any other identifying information; and

(B) not harass, threaten, or intimidate persons and their families.

(2) Local authorities will enforce the provisions contained in paragraph (1) of this subsection.

§412.110. Monthly Ability-to-Pay Fee Schedule.

The Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit A in §412.113 of this title (relating to Exhibit), is based on 150% of the Federal Poverty Guidelines. TDMHMR may revise the Monthly Ability-To-Pay Fee Schedule, based on any changes in the Federal Poverty Guidelines.

§412.111. Training.

In accordance with a prescribed training program developed by TDMHMR, all local authority staff who are involved in implementing or explaining the content of this subchapter must demonstrate competency prior to performing tasks related to charging for community services and annually thereafter.

§412. 112. Information for Persons (and Parents).

The local authority must provide persons (and parents) TDMHMR-approved information relating to the policies for charging for community services that are contained in this subchapter prior to their entry into services, except in a crisis or emergency.

§412. 113. Exhibit.

This subchapter references Exhibit A - The Monthly Ability-To-Pay Fee Schedule, copies of which are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

§412. 114. References.

This subchapter references the following rules and statutes:

(1) Texas Health and Safety Code, §533.035 and §534.067;

(2) Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90;

(3) 25 TAC, §401.464 (relating to Notifications and Appeals Process); and

(4) 25 TAC, Chapter 419, Subchapter G (concerning Medicaid Fair Hearings).

§412.115. Distribution.

This subchapter is distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

(2) executive, management, and program staff of TDMHMR Central Office;

(3) executive directors of all local authorities; and

(4) advocacy organizations.

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 October 8, 2001.

TRD-200106037
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 206-5216

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER B. INSURANCE CODE, CHAPTER 5, SUBCHAPTER B

DIVISION 9. BEST PRACTICES FOR RISK MANAGEMENT AND LOSS CONTROL FOR FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES

28 TAC §5.1740, §5.1741

The Texas Department of Insurance proposes new Division 9, §5.1740, §5.1741 concerning best practices for risk management and loss control for for-profit and not-for-profit nursing homes. These new sections are necessary to implement legislation enacted by the 77th Legislature in Senate Bill (SB) 1839. SB 1839, among other things, adds Article 5.15-4 to the Insurance Code to require the Commissioner of Insurance to adopt best practices for risk management and loss control

that may be used by for-profit and not-for-profit nursing homes. Article 5.15-4 further provides that a nursing home's adoption and implementation of these best practices may be considered by an insurance company or the Texas Medical Liability Insurance Underwriting Association (JUA) in determining rates for professional liability insurance applicable to a for-profit or not-for-profit nursing home. The best practices proposed by these rules and created pursuant to Article 5.15-4 do not establish standards of care for nursing homes applicable in a civil action against a nursing home. Rather, in accord with the legislative focus, these best practices concentrate on procedures to minimize insurance claims. Quality of care issues, although related to the proposed rules, are not the subject of these rules. Pursuant to SB 1839, quality of care issues are the responsibility of other health and human services agencies. In developing the best practices for risk management and loss control, Article 5.15-4 also requires the commissioner to consult with the Texas Health and Human Services Commission and a task force appointed by the commissioner that is composed of representatives of insurance companies that write professional liability insurance for nursing homes, the JUA, nursing homes, and consumers. By Commissioner's Order No. 01-0809 dated August 23, 2001, a task force was appointed consisting of the General Manager of the JUA and three representatives of each of the other categories of entities set forth in Article 5.15-4. Based on input from consultations and meetings with the Health and Human Services Commission and the task force and on review of various treatises and publications in the field of risk management and loss control, such as Mehr and Hedges, Risk Management, Concepts and Applications and MMI Companies, Inc. (St. Paul Insurance Companies), "Long Term Care," Clinical Risk Modification Program, the department proposes initial best practices for risk management and loss control that set forth guidelines to handle and respond to the following nursing home risk exposure areas: falls, resident abuse, pressure ulcers, nutrition and hydration, medication management, restraints (if used), infection control, burns and scalds, and elopement. The task force helped to identify the nine key risk exposure areas for attention by nursing home loss control programs and reached a consensus on the guidelines, which were also reviewed by representatives of the Health and Human Services Commission. Due to the individual characteristics of each nursing home and ongoing research and development in nursing home care, the task force consensus was that the best practices would outline a basic structure for risk management and loss control as a starting point for a nursing home. Accordingly, the proposed rules contain this basic structure which over time may be subject to further refinement. Proposed §5.1740 describes the purpose and scope of the sections. Proposed §5.1741 sets forth the enumerated best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes and that may be considered by an insurance company or the JUA in determining a nursing home's rates for professional liability insurance.

Consideration of the proposal will occur in a public hearing under Docket Number 2501 scheduled for 9:30 a.m. on November 29, 2001, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Marilyn Hamilton, associate commissioner of the property and casualty program, has determined that for each year of the first five years that the proposed sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new sections and that there will be no effect on local employment or the local economy.

Ms. Hamilton also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit from administering these sections is enhancing the insurability of for-profit and not-for-profit nursing homes through access to available and affordable professional liability insurance. In this regard, there will be a benefit from the anticipated correlation between a nursing home's implementation of the best practices for risk management and loss control and rates for professional liability insurance. Because good risk management practices generally contribute to better loss experience and premium stability, this may enhance market availability and eventually lower rates. Based on consultation with the Health and Human Services Commission and the nursing home task force appointed by the commissioner, there may be an increase in costs to those nursing homes which decide to implement the best practices for risk management and loss control, to the extent that these best practices are more extensive than the nursing home's current practices; however, it is important to note that the statute provides that these requirements are optional for the nursing homes and, further, any potential increase in costs to nursing homes that elect to implement these practices is due to the legislation and not a result of the administration of the rule. In any event, costs to the nursing home and professional liability insurance industries on a long term basis may actually be less to the extent that improved risk management and loss control may result in lower rates for professional liability insurance. Further, it is neither legal nor feasible to exempt small or micro-businesses from all or part of these rules considering the purpose of the statute under which the rules are to be adopted, namely to enhance the insurability of for-profit and not-for-profit nursing homes through access to available and affordable professional liability insurance.

To be considered, written comments on the proposal must be submitted no later than 5 p.m. on November 19, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property & Casualty, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new sections are proposed pursuant to the Insurance Code Article 5.15-4 and §36.001. Article 5.15-4, as enacted by the 77th Legislature under SB 1839, requires the Commissioner of Insurance to adopt best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes and further prescribes the consideration and use of such practices. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance as authorized by statute.

The following statute is affected by the proposed sections: Insurance Code Article 5.15-4

§5.1740. Purpose and Scope.

These sections implement Insurance Code Article 5.15-4, concerning best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes. A nursing home's adoption and implementation of these best practices may be considered by

an insurance company or the Texas Medical Liability Insurance Underwriting Association in determining the nursing home's rates for professional liability insurance. The best practices for risk management and loss control adopted pursuant to these sections do not establish standards of care for nursing homes applicable in a civil action against a nursing home. The elements identified in the risk management and loss control program are designed to be feasible for implementation by the typical nursing home and to lead to a reduction in exposure to loss causing incidents. The anticipated benefits of implementing these risk management practices are reductions in the number of claims and mitigation of the severity of claims that do occur. The establishment of a risk management and loss control program in a particular risk exposure area or areas does not supplant or replace any other nursing home initiative established to address quality assurance and assessment (whether statutorily mandated or otherwise), but instead supplements and supports it.

§5.1741. Best Practices for Risk Management and Loss Control.

(a) The Commissioner of Insurance establishes the following best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes. The following elements are essential to a loss control program.

(1) Personnel Responsible for Program Operation. The nursing home should create an organizational structure that delegates authority to specific personnel for the day-to-day operation of a loss control program and which functions to ensure the program is established and implemented correctly. The nursing home can show it has met this element by:

(A) Appointing a program lead or leads to be responsible for the administration of the program in one or more exposure areas as identified in subsection (b) of this section. The designated program lead(s) should report to the administrator or the administrator's designee, such as the risk manager. The program lead(s) should have the authority to recommend and take immediate action upon observing a potential hazard, and this authority should be recognized in the program lead's job description. A program lead(s) should have available assistants and responsible parties to assist during off-hour periods.

(B) Appointing a Risk Management/Loss Control Committee.

(C) Appointing training instructors for new employees and in-service training.

(2) Loss Prevention/Mitigation. The nursing home should make a proactive effort to identify hazards and prevent losses before they occur. This element can be demonstrated by:

(A) Establishing and implementing policies and procedures to mitigate losses.

(i) Conducting ongoing analysis of actual and potential hazards in each individual exposure area. Policies and procedures should be created that will prevent situations that could give rise to an adverse event, which is defined as an occurrence that has the potential to produce a claim, including a minor event or situation with accident causing potential.

(ii) Conducting ongoing assessment to identify residents that may be susceptible to events occurring in each exposure area.

(iii) Establishing facility maintenance and inspection procedures that allow for preventive maintenance and inspections to be conducted on a regularly scheduled basis, such as daily, weekly, or otherwise.

(B) Establishing and implementing policies and procedures for responding to an adverse event.

(i) Establishing policies and procedures that allow for the family and/or guardian to be informed as soon as possible in the event of injury.

(ii) Including documentation in the resident's or other appropriate record by noting interventions, injury, and prevention measures, and filing an adverse event report with the program lead(s).

(C) Establishing and implementing policies and procedures for conducting an investigation of an adverse event. The investigator will document the event and recommend prevention efforts for the resident and report the recommendation(s) to the Risk Management/Loss Control Committee and any other committee responsible for quality assurance and assessment.

(D) Establishing and implementing policies and procedures for training.

(i) Establishing a policy to orient new residents and families to the facility and to each exposure area prevention program.

(ii) Establishing a training program for new hires and conducting periodic in-service training to refresh and supply new information gathered through the risk management/loss control tracking and trending process.

(3) Documentation. The nursing home should ensure that proper documentation occurs which serves as evidence of a functioning program and also establishes a record of quality of care.

(A) The Risk Management/Loss Control Committee should record minutes of meetings and document any actions recommended or taken by the committee or a program lead(s).

(B) Inspection/safety reports should be sent to the respective program lead(s) and the facility manager.

(C) All individual and in-service training should be documented.

(D) Individual resident or other appropriate records, such as a resident care plan, should be documented.

(E) Adverse events should be recorded as well as a follow-up in risk management program records.

(4) Monitor Results. The nursing home should monitor the results of the risk management and loss control program to evaluate the effectiveness and overall performance of the program. Monitoring allows identification of problem areas that are not producing desired results and can be demonstrated by:

(A) Tracking adverse events and near adverse events.

(B) Documenting the adverse events and near adverse events through the event response and investigation reports.

(C) Employing tracking methods through charting frequency, location of events by facility area, and by category of event.

(D) Using the tracking process to identify trends in problem areas for correction.

(5) Modify and Improve the Risk Management/Loss Control Program Based on Results. The nursing home should modify and improve the program based on monitoring to achieve loss control objectives of the program. This element can be demonstrated by:

(A) Developing and implementing procedures for reporting risk management and loss control improvement suggestions to the Risk Management/Loss Control Committee and any other committee responsible for quality assurance and assessment.

(B) Developing and implementing policies and procedures for examining the event tracking and correction process for improvements in accuracy and utility.

(b) A nursing home's adoption and implementation of the best practices for risk management and loss control should focus on the following risk exposure areas, which are exposure areas that appear often in claim lists and claim prevention materials published by leading nursing home insurers, and any additional areas as may be determined to be risk exposures. The list is not inclusive and the descriptions are illustrative only, but a nursing home focusing initially in these areas may be more likely to succeed with its program.

(1) Falls -- Slips and trips by a resident in or about a nursing home.

(2) Resident Abuse -- Infliction of injury or mistreatment with resulting physical harm or mental anguish.

(3) Pressure Ulcers -- A clinical risk, also referred to as bedsores or decubitus ulcers, that is a result of unrelieved pressure on a part of the body.

(4) Nutrition and Hydration -- Providing adequate and nutritious food and liquid to nursing home residents, including attention to special dietary needs.

(5) Medication Management -- Prevention of drug-related problems including but not limited to over- or under-prescribing; improper drug selection; and over-dosage.

(6) Restraints (if used) -- Physical restraints such as manual methods or physical devices that restrict freedom of movement or access to a resident's body. Chemical restraints can be described as psychotropic or behavior modifying drugs used to prevent a resident from exhibiting behavioral symptoms.

(7) Infection Control -- Preventing, containing, and treating infections within a nursing home facility.

(8) Burns and Scalds -- Injury due to exposure to heat, sun, or chemicals.

(9) Elopement -- To slip away or run away from a facility. For risk management purposes this includes wandering or movement away from the usual or normal place within the nursing home facility.

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 October 5, 2001.

TRD-200106007
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 155. REPORTS AND INFORMATION GATHERING
SUBCHAPTER C. PROCEDURES FOR RESOLVING CONTRACT CLAIMS AND DISPUTES

37 TAC §155.31

The Texas Department of Criminal Justice proposes an amendment to §155.31, concerning Establishing Procedures for Resolving Contract Claims and Disputes. The purpose of the amendment to subsection (j) is to further outline the appeal process.

Brad Livingston, Chief Financial Officer for the Department of Criminal Justice, has determined that for each year of the first five-year period the amendment will be in effect there will be no fiscal implications for state or local government and no local employment impact as a result of enforcing or administering the section as proposed.

Mr. Livingston also has determined that for each year of the first five year period the new section is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be the existence of orderly contract dispute resolution procedures for the Department, in compliance with state law. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

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 amendment is proposed under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and §495.008(e)(2001), which specifically authorizes this section.

Cross Reference to Statute: Texas Government Code, §495.008(e).

§155.31. Establishing Procedures for Resolving Contract Claims and Disputes.

(a) Purpose. These rules are intended to serve as guidelines for the negotiation and mediation of a claim of breach of contract asserted by a contractor against TDCJ under the Government Code, Chapter 2260. These rules are binding upon TDCJ. These rules are not intended to replace agency procedures relating to breach of contract claims that are mandated by state or federal law, but are intended to provide procedures when none are so mandated.

(b) Policy. It is the policy of the Texas Board of Criminal Justice (the Board) and TDCJ to resolve breach of contract claims as efficiently and as expeditiously as possible, consistent with prudent stewardship of State of Texas assets.

(c) Applicability. This section does not apply to an action of a unit of state government for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(1) This section does not apply to a contract action proposed or taken by a unit of state government for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Government Code, Chapter 2001.

(2) This section does not apply to contracts:

(A) between a unit of state government and the federal government or its agencies, another state or another nation;

(B) between two or more units of state government;

(C) between a unit of state government and a local governmental body, or a political subdivision of another state;

(D) between a subcontractor and a contractor;

(E) subject to §201.112 of the Transportation Code;

(F) within the exclusive jurisdiction of state or local regulatory bodies;

(G) within the exclusive jurisdiction of federal courts or regulatory bodies; or

(H) that are solely and entirely funded by federal grant monies other than for a project defined in subsection (d)(9) of this section.

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

(1) Chief administrative officer - The executive director responsible for the day-to-day operations of TDCJ.

(2) Claim - A demand for damages by the contractor based upon TDCJ's alleged breach of the contract.

(3) Contract - A written contract between TDCJ and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for TDCJ; or

(B) to perform a project as defined by Government Code, §2166.001.

(4) Contractor - Independent contractor who has entered into a contract directly with TDCJ. The term does not include:

(A) the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) an employee of a unit of state government; or

(C) a student at an institution of higher education.

(5) Counterclaim - A demand by TDCJ based upon the contractor's claim.

(6) Day - a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purpose of that act.

(7) Event - An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract.

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of TDCJ to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed TDCJ for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to take timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by TDCJ, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(8) Parties - The contractor and TDCJ who have entered into a contract in connection with which a claim of breach of contract has been filed under this section.

(9) Project - As defined in Government Code, §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(10) Services - The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of a unit of state government.

(e) Prerequisites to Suit. The procedures contained in this section are exclusive and required prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

(f) Sovereign Immunity. This section does not waive TDCJ's sovereign immunity to suit or liability.

(g) Notice of Claim of Breach of Contract.

(1) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(2) The notice of claim shall:

(A) be in writing and signed by the contractor or the contractor's authorized representative;

(B) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the chairperson of the Contract Disputes Committee, Assistant Director of Purchasing and Leases, Texas Department of Criminal Justice, Spur 59 off Highway 75 North, Administration Building, Room 137, Huntsville, Texas 77340; and

(C) state in detail:

(i) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(ii) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(iii) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(3) In addition to the mandatory contents of the notice of claim as required by paragraph (2) of this subsection, the contractor may submit supporting documentation or other tangible evidence to facilitate TDCJ's evaluation of the contractor's claim.

(4) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

(h) Agency Counterclaim.

(1) TDCJ asserting a counterclaim under the Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section.

(2) The notice of counterclaim shall:

(A) be in writing;

(B) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(C) state in detail:

(i) the nature of the counterclaim;

(ii) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(iii) the legal theory supporting the counterclaim.

(3) In addition to the mandatory contents of the notice of counterclaim required by paragraph (2) of this subsection, TDCJ may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of TDCJ's counterclaim.

(4) The notice of counterclaim shall be delivered to the contractor no later than 90 days after TDCJ's receipt of the contractor's notice of claim.

(5) Nothing herein precludes TDCJ from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(i) Contract Disputes Committee (the Committee).

(1) The executive director will name the members and chairman of a Committee or Committees to serve at his or her pleasure. It will be the responsibility of the Committee to gather information, study, and meet informally with contractors, if requested, to resolve any disputes that may exist between the department office and the contractor, and which result in one or more contract claims or disputes.

(2) TDCJ stresses that, to every extent possible, disputes between a contractor and TDCJ employee, design professional, or other contractor in charge of a project or providing services in connection with a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a breach of contract claim is not reached with the department office, the contractor should file a request with the Committee chairperson. In no event may such a claim be filed with the department more than 180 days after the date of the event giving rise to the claim.

(3) The Committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office it deems appropriate.

(4) The Committee will then afford the contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the contractor an opportunity to present additional relevant information and respond to information the Committee has received from the department office.

(5) The Committee chairperson will give written notice of the Committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the Committee chairperson in writing within 20 days of the date such notice is received, and the chairperson will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the Committee, the contractor may appeal to the executive director. If the department office is dissatisfied with the proposal of the Committee, the department office may appeal to the executive director.

(j) Appeal to the Executive Director

(1) An aggrieved contractor or department office may file a written appeal of the Committee's decision to the executive director within ten (10) days of the Committee's decision. The executive director or his or her designee may uphold, reverse, or modify the decision of the Committee.

(2) The executive director or his or her designee will give written notice of the proposed disposition of the claim or dispute to the contractor and department office. If that disposition is acceptable to the contractor, the contractor shall advise the executive director, in writing, within 20 days of the date such notice is received. The department office shall have no right to object to the disposition of the claim or dispute made by the executive director or his or her designee.

(3) Appeal to the Texas Board of Criminal Justice With Respect To Certain Contracts. A contractor that manages a facility that houses inmates of TDCJ or releasees under the supervision of TDCJ may appeal any imposed sanction under the contract to the Texas Board of Criminal Justice.

(k) Request for Voluntary Disclosure of Additional Information.

(1) Upon the filing of a claim or counterclaim, parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(A) accounting records;

(B) correspondence, including, without limitation, correspondence between TDCJ and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(C) schedules;

(D) the parties' internal memoranda;

(E) documents created by the contractor in preparing its offer to TDCJ and documents created by TDCJ in analyzing the offers it received in response to a solicitation.

(2) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(3) The contractor and TDCJ may seek additional information directly from third parties, including, without limitation, TDCJ's third-party consultants and the contractor's subcontractors.

(4) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(l) Duty to negotiate. The parties shall negotiate in accordance with the timetable set forth in subsection (m) of this section to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

(m) Timetable.

(1) Following receipt of a contractor's notice of claim, the Contract Disputes Committee (the "Committee") shall review the contractor's claim(s) and TDCJ's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claims(s) and counterclaim(s).

(2) Subject to paragraph (3) of this subsection, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(A) the date of termination of the contract;

(B) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(C) the date TDCJ receives the contractor's notice of claim.

(3) TDCJ may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(A) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(B) delivering written notice to the contractor when TDCJ is ready to begin negotiations.

(4) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in paragraphs (2) and (3) of this subsection, whichever is applicable.

(5) Subject to paragraph (6) of this subsection, the parties shall complete the negotiations that are required by this section as a prerequisite to a contractor's request for contested case hearing no later than 270 days after TDCJ receives the contractor's notice of claim.

(6) The parties may agree in writing to extend the time for negotiations on or before the 270th day after TDCJ receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(7) The contractor may request, in writing, a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to subsection (r) of this section after the 270th day after TDCJ receives the contractor's notice of claim or the expiration of any extension agreed to under paragraph (6) of this subsection.

(8) The parties may agree to mediate the dispute at any time before the 270th day after TDCJ receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to paragraph (6) of this subsection. The mediation shall be governed by subsections (s), (t), (u), (v), (w), and (x) of this section.

(9) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in paragraphs (2) and (3) of this subsection, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

(n) Conduct of Negotiation.

(1) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(2) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with subsections (s), (t), (u), (v), (w), and (x) of this section. Parties may choose an assisted negotiation process other than mediation, including, without limitation, processes such as those described in subsections (aa), (bb), (cc), and (dd) of this section.

(3) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(4) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(o) Settlement Approval Procedures. The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

(p) Settlement Agreement.

(1) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(2) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and TDCJ who have authority to bind each respective party.

(3) A partial settlement does not waive a parties' rights under the Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

(q) Costs of Negotiation. Unless the parties agree, in writing, otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

(r) Request for Contested Case Hearing.

(1) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this section on or before the 270th day after TDCJ receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to subsection (m)(6) of this section, the contractor may file a request with TDCJ for a contested case haring before SOAH.

(2) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief administrative officer of TDCJ or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to subsection (m)(6) of this section.

(3) TDCJ shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(4) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by TDCJ if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(s) Mediation Timetable.

(1) The contractor and TDCJ may agree to mediate the dispute at any time before the 270th day after TDCJ receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(2) A contractor and TDCJ may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(t) Conduct of Mediation.

(1) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(2) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(3) To facilitate a meaningful opportunity for settlement, the parties, shall to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

(u) Agreement to Mediate.

(1) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter into the contract and include a contractual provision to do so. The parties may mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(2) Any agreement to mediate should include consideration of the following factors.

(A) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under Section 154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualifications set forth in subsection (v) of this section.

(B) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(C) The location of the mediation.

(D) Allocation of costs of the mediator.

(E) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within TDCJ or contracting entity.

(F) The settlement approval process in the event the parties reach agreement at the mediation.

(v) Qualification and Immunity of the Mediator.

(1) The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(2) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(3) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

(w) Confidentiality of Mediation and Final Settlement Agreement.

(1) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(2) The confidentiality of a final settlement agreement to which TDCJ is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

(x) Costs of Mediation. Unless the contractor and TDCJ agree, in writing, otherwise, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

(y) Initial Settlement Agreement. Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and TDCJ, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

(z) Final Settlement Agreement.

(1) A final settlement agreement reached during, or as a result of, mediation, that resolves an entire claim or any designated and severable portion of a claim, shall be in writing and signed by representatives of the contractor and TDCJ who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(3) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

(aa) Assisted Negotiation Processes. Parties to a contract dispute under Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes in addition to negotiation and mediation to resolve their dispute.

(bb) Factors supporting the Use of Assisted Negotiation Processes. The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

(1) the parties recognize the benefits of an agreed resolution of the dispute;

(2) the expense of proceeding to contested case hearing at SOAH is substantial and might outweigh any potential recovery;

(3) the parties want an expedited resolution;

(4) the ultimate outcome is uncertain;

(5) there exists factual or technical complexity or uncertainty which would benefit from expertise of a thirty-party expert for technical assistance or fact-finding;

(6) the parties are having substantial difficulty communicating effectively;

(7) a mediator third party could facilitate the parties' realistic evaluation of their respective cases;

(8) there is an on-going relationship that exists between parties;

(9) the parties want to retain control over the outcome;

(10) there is a need to develop creative alternatives to resolve the dispute;

(11) there is a need for flexibility in shaping relief;

(12) the other side has an unrealistic view of the merits of their case;

(13) the parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(cc) Use of Assisted Negotiation Processes. Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

(1) Mediation (See the appropriate sections).

(2) Early evaluation by a third-party neutral.

(A) This is a confidential conference where the parties and their counsel present the factual and legal bases of their claim and receive a non-binding assessment by an experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentation, the third-party neutral identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the mini-trial, described in paragraph (4) of this subsection. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

(i) the parties agree that the dispute can be settled;

(ii) the dispute involves specific legal issues;

(iii) the parties disagree on the amount of damages;

(iv) the opposition has an unrealistic view of the dispute;

(v) the neutral is a recognized expert in the subject area or area of law involved.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

(i) factual issues requiring expert testimony may be dispositive of liability or damage issues;

(ii) the use of a neutral is cost effective;

(iii) the neutral's findings could narrow factual issues for contested case hearing.

(4) Mini-trial.

(A) A min-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage should be brief, but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witnesses' testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than 1-2 days.

(D) Settlement discussions, facilitated by the third-party neutral, take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

(E) Mini-trials may be appropriate when:

(i) the dispute is at a stage where substantial costs can be saved by a resolution based on limited information gather;

(ii) the matter justifies the senior executive's time required to complete the process;

(iii) the issues involved include highly technical mixed questions of law and fact;

(iv) the matter involves trade secrets or other confidential or proprietary information; or

(v) the parties seek to narrow the large number of issues in dispute.

(dd) Approval. Any settlement reached pursuant to this section may require the approval of the Texas Board of Criminal Justice, the Attorney General of Texas, the Governor of Texas, or the Texas Legislature, as required by Board policy, statutes and rules of the State of Texas, and the General Appropriations Act.

(ee) Intent. It is the intent of TDCJ to comply with the provisions of Texas Government Code, Chapter 2260. To the extent that any term or provision of this rule is in conflict with Chapter 2260, the terms and provisions of Chapter 2260 shall prevail.

(ff) Disclaimer. TDCJ and the Board do not waive sovereign immunity from suit or liability due to the establishment of this rule. TDCJ and the Board consider the procedure described in Chapter 2260 and this rule to be the exclusive means of resolving breach of contract claims against state agencies.

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 October 2, 2001.

TRD-200105945
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 343-6041

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

SUBCHAPTER B. BOARD CERTIFICATION EVALUATION

40 TAC §183.157

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §183.157. The amendment is proposed to implement H.B. 2735 which authorizes the Commission to test and certify interpreters to function in court settings.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be that the program will be administered in accordance with H.B. 2735. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Randi Turner, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§183.157. Recertification Process.

The commission has established the following requirements for recertification. Either direct evaluation of interpreting/transliterating skills or verification of training attendance may be used for recertification.

(1) Evaluation of interpreting/transliterating skills. A certificate holder may apply for recertification by taking the same level evaluation or the next level of evaluation. A certificate holder must successfully pass the evaluation before another 5-year certification period is awarded.

(2) Verification of training attended or given. In lieu of evaluation, a certificate holder shall submit documentation of training

attendance or presentations given within the last certification period to indicate the following:

(A) Completion of 5.0 CEU's or equivalent in approved training related to professional ethics, the field of interpreting, standards of interpreting practice, or other pre-approved topics.

(B) Completion of 7.5 CEU's or equivalent in approved training related to professional ethics, the field of interpreting, standards of interpreting practice , or other pre-approved topics beginning January 1, 2001.

(C) Completion of 10.0 CEU's or equivalent in approved training related to professional ethics, the field of interpreting, standards of interpreting practice, or other pre-approved topics beginning January 1, 2003.

(D) Certified Court interpreters must obtain two (2) continuing education units (CEUs) for training that is approved for certified court interpreters. The CEU's earned for court interpreter training may count toward the CEU requirements for regular certification maintenance.

(E) Training offered for CEU's for the certified court interpreter specialty must be approved by the agency. Court interpreter training must be determined to be related to legal and court interpreting or to provide information about legal or court issues.

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 October 5, 2001.

TRD-200106017
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 407-3250

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SUBCHAPTER E. FEES

40 TAC §183.573

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §183.573. The amendment is proposed to implement H.B. 2735 which authorizes the Commission to test and certify interprets to function in court settings.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be that the program will be administered in accordance with H.B. 2735. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Randi Turner, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§183.573. Fees.

The commission shall charge the following fees:
Figure: 40 TAC §183.573

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 October 5, 2001.

TRD-200106032
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 407-3250

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.80 - 1.85

The Texas Department of Transportation proposes amendments to §§1.80 - 1.85 concerning advisory committees.

EXPLANATION OF PROPOSED AMENDMENTS

Government Code, §2110.005, provides that a state agency that is advised by an advisory committee shall adopt rules stating the purpose of the committee and describing the task of the committee and the manner in which the committee will report to the agency. Government Code, §2110.008, requires the commission to sunset advisory committees at least every four years. The Texas Department of Transportation's advisory committees are abolished at the end of this year unless continued by the commission. These amendments will clarify the procedures applicable to advisory committees and address the desirability of continuing or abolishing the various advisory committees.

Section 1.80 and §1.81 are amended to conform to current terminology used in the Texas Register.

Section 1.82(c)(2) is amended to ensure that advisory committee meetings are held in Texas and in places that are readily accessible to the public. This change ensures that meetings will be fully open to the public.

Section 1.82(i) is amended to reauthorize the department's statutory advisory committees, which include the Aviation Advisory Committee, the Public Transportation Advisory Committee, and the Port Authority Advisory Committee. In each case, the department has determined that the committee serves a useful

continuing function by providing a conduit for the exchange of information with the affected industry. The Port Authority Advisory Committee has voted 3-0, with one abstention, to recommend its continuation. Each committee is continued in existence until December 31, 2003. This date will permit the commission to conduct another comprehensive review of its advisory committees after the 2003 legislative session. The Border Trade Advisory Committee is already specifically scheduled to expire on December 31, 2005, and is therefore unaffected.

Section 1.83 has been amended to shorten the process for advisory committee review of proposed rules. The current process involves two steps, preliminary approval and final approval. This has proved cumbersome because most advisory committees do not meet often enough to permit two evaluations within a reasonable time. The amendment replaces formal preliminary approval with informal preliminary notification. The new procedure will permit advisory committee members to provide individual input during the early stage of rule development, while still meeting formally to offer their collective advice at the stage of final approval. Additional nonsubstantive changes are made to clarify the language of this section.

Section 1.84(b) and (d) are deleted and succeeding subsections are renumbered accordingly. The amendments abolish two statutory advisory committees, the Household Goods Carriers Advisory Committee and the Vehicle Storage Facility/Tow Truck Rules Advisory Committee. These committees are being abolished because the department has developed more informal, successful ways to receive input from household goods carriers, vehicle storage facilities, tow truck operators, and consumers on single issues or programs. Each committee has fulfilled its original purpose, and neither has met in more than two years. Under these circumstances, continuation of these committees at this time would no longer be in the public interest.

Section 1.85(a)(2) is deleted and succeeding subsections are renumbered accordingly. Section 1.85(a)(2) established a Statewide Transportation Policy Committee. This committee has been inactive for several years. To obtain input into the planning process, the department has relied instead on public meetings and other methods of obtaining public input. Therefore, the Statewide Transportation Policy Committee no longer serves a useful function.

Section 1.85(c) is amended to reauthorize advisory committees created by the department on its own authority. These include project advisory committees, rulemaking advisory committees, the Intelligent Transportation Systems Steering Committee, and the Bicycle Advisory Committee. In each case, the department has determined that the committee serves a useful continuing function by providing a conduit for the exchange of information with the public. Each committee is continued in existence until December 31, 2003. This date will permit the commission to conduct another comprehensive review of its advisory committees after the 2003 legislative session.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. The costs for state government to operate the advisory committees are estimated at $24,604 for FY 2002, $33,241.00 for FY 2003, and $13,338.00 for FY 2004. There are no fiscal implications for local governments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard D. Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Monroe has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to continue to provide a forum to facilitate communication among the department, other governmental agencies, and the public regarding transportation issues and to enhance the efficiency of advisory committees. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard D. Monroe, General Counsel, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 19, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation. In addition, the amendments are proposed under Government Code, Chapter 2110, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee, describe the task of the committee, state the manner in which the committee will report to the agency, and establish a date on which the committee is abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

Transportation Code, §643.155, and Transportation Code, §643.202, will no longer be operative. No other statutes, articles, or codes are affected by the proposed amendments.

§1.80. Scope and Purpose.

This subchapter prescribes [~~The sections under this undesignated head prescribe~~] the uniform procedures governing the operation of committees created to advise the Texas Transportation Commission or Texas Department of Transportation.

§1.81. Definitions.

The following words and terms, when used in this subchapter [~~undesignated head~~], shall have the following meanings, unless the context clearly indicates otherwise.

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

§1.82. Statutory Advisory Committee Operations and Procedures.

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

(c) Meetings.

(1) Open meeting requirements. Advisory committees shall post and hold all meetings in accordance with the provisions applicable to meetings of the commission under the Texas Open Meetings Act, [~~the~~] Government Code, Chapter 551. Filing of notice of open meetings with the Secretary of State shall be coordinated through the department's general counsel.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (f) of

this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The office designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail or telephone or both, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) - (6) (No change.)

(7) Public information. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of [~~the~~] Government Code, Chapter 552.

(d) - (h) (No change.)

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2003 [~~2001~~], unless the commission amends its rules to provide for a different date [~~continued in existence by affirmative vote of the commission~~].

§1.83. Rulemaking.

(a) Purpose. This section governs the role of a statutory advisory committee in the adoption of new or amended rules pursuant to the Administrative Procedure Act, [~~the~~] Government Code, Chapter 2001.

(b) Preliminary notification [~~review~~]. When the department determines that it is necessary or desirable for the commission to adopt new or amended rules, the department will:

(1) notify the members of the relevant advisory committee, if any, of the nature of the rulemaking, including the reasons for the rules and the general subjects to be covered; and

(2) take into consideration any written responses received from committee members [~~set a meeting of the relevant advisory committee for the purpose of providing advice and recommendations~~] prior to completing the final draft of the proposed rules.

(c) (No change.)

(d) Comment. Prior to commission adoption of proposed rules that are subject to this section, the commission will provide the advisory committee and department staff an opportunity to appear before it for the purpose of advising the commission of the advisory committee's [~~its~~] recommendations regarding the proposed rules.

(e) Emergency rules. If the department submits emergency rules to the commission [~~emergency rules~~] under [~~the~~] Government Code, Chapter 2001, §2001.034, it is not required to comply with subsections (b) and (c) of this section. The members of the committee will [~~shall~~] be [~~so~~] notified in writing of the adoption of emergency rules within 10 days of commission action.

(f) - (g) (No change.)

§1.84. Statutory Advisory Committees.

(a) (No change.)

~~[(b) Household Goods Carriers Advisory Committee.]~~

~~[(1) Purpose. Created pursuant to Transportation Code, §643.155, the Household Goods Carriers Advisory Committee provides a forum for household goods carriers and the general public to provide input into modernizing and streamlining department rules adopted under Transportation Code, §643.153, which are designed to protect customers of household goods movers from deceptive or unfair practices and unreasonably hazardous activities on the part of movers. The committee, with representation from the regulated community, the general public, and the department, helps ensure effective communication among interested parties and valuable input into modernizing and streamlining department rules affecting household goods carriers and their customers.]~~

~~[(2) Membership. Pursuant to Transportation Code, §643.155(a), the executive director or the executive director's designee shall appoint to the Household Goods Carrier Advisory Committee:]~~

~~[(A) three members as representatives of the general public;]~~

~~[(B) one member as a representative of the department; and]~~

~~[(C) one member each as representatives of motor carriers transporting household goods using small equipment, motor carriers transporting household goods using medium equipment, and motor carriers transporting household goods using large equipment.]~~

~~[(3) Duties. The committee shall:]~~

~~[(A) examine the rules adopted under Transportation Code, §643.153(a) and (b) and advise the department on methods of modernizing and streamlining such rules;]~~

~~[(B) conduct a study of the feasibility and necessity of requiring vehicle liability insurance for household goods carriers required to register under Transportation Code, §643.153(c);]~~

~~[(C) recommend a maximum level of liability for loss or damage of household goods carriers required to register under Transportation Code, §643.153(c), not to exceed 60 cents per pound; and]~~

~~[(D) perform other duties as assigned by the Motor Carrier Division Director.]~~

~~[(4) Meetings. The committee shall meet at the request of the Motor Carrier Division Director.]~~

~~[(5) Rulemaking. Section 1.83 of this subchapter does not apply to the Household Goods Carrier Advisory Committee.]~~

(b) [~~(c)~~] Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet:

(A) at least quarterly, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.83 of this subchapter.

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

~~[(d) Vehicle Storage Facility/Tow Truck Rules Advisory Committee.]~~

~~[(1) Purpose. Created pursuant to Transportation Code, §643.202, the purpose of the Vehicle Storage Facility/Tow Truck Rules Advisory Committee is to advise the department on the development of rules concerning the registration of tow trucks under Transportation Code, Chapter 643, and the administration of the Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a. The committee, with representation from the regulated community, law enforcement, and the general public, helps ensure effective communication among interested parties and valuable input into the development of rules affecting the tow truck industry.]~~

~~[(2) Membership. The executive director or the executive director's designee will appoint to the Vehicle Storage Facility/Tow Truck Rules Advisory Committee two members who represent the general public and one member each to represent the following:]~~

~~[(A) tow truck operators;]~~

~~[(B) vehicle storage facility operators;]~~

~~[(C) owners of property having parking facilities;]~~

~~[(D) law enforcement agencies or municipalities; and]~~

~~[(E) insurance companies.]~~

~~[(3) Duties. The committee shall advise the department on the adoption of rules regarding:]~~

~~[(A) the application of Transportation Code, Chapter 643 to tow trucks; and]~~

~~[(B) the administration by the department of the Vehicle Storage Facility Act.]~~

~~[(4) Meetings. The committee shall meet:]~~

~~[(A) at the request of the Motor Carrier Division Director; and]~~

~~[(B) as required by §1.83 of this subchapter.]~~

(c) [~~(e)~~] Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §53.001, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the port industry in Texas and others who have an interest in ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding ports and transportation-related matters to be considered in formulating department policies concerning the Texas port system.

(2) Membership.

(A) The commission will appoint five members to staggered three-year terms unless removed sooner at the discretion of the commission.

(B) The commission will appoint:

(i) one member from the Port of Houston Authority of Harris County;

(ii) two members from ports located north of the Matagorda/Calhoun County line and excluding the Port of Houston Authority; and

(iii) two from ports located south of the Matagorda/Calhoun County line.

(C) The commission will consider nominees for the five members from:

(i) Texas Ports Association;

(ii) other port associations;

(iii) Texas ports; and

(iv) the general public.

(D) Officers. The Port Authority Advisory Committee shall elect a chair and a vice-chair for two-year terms. The department encourages the committee to rotate the chair among the members from the different geographic areas represented.

(3) Duties. The committee shall:

(A) advise the commission and the department on matters relating to port authorities, including:

(i) intermodal and multimodal transportation issues relating to Texas waterways, ports, and port improvements, including other issues affecting port access and infrastructure needs; and

(ii) the identification, development, and implementation of potential funding mechanisms, including the state infrastructure bank, for addressing the issues described by clause (i) of this subparagraph; and

(B) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meeting. The committee shall meet at least once a calendar year and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(5) Subcommittees.

(A) The Port Authority Advisory Committee may appoint one or more subcommittees to provide advice on specific issues.

(B) A subcommittee shall report any findings and recommendations to the Port Authority Advisory Committee chair.

(d) [~~(f)~~] Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, and committee members representing border trade interests. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on

particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The commission will appoint seven members to staggered three-year terms expiring on August 31 of each year. The initial membership of the committee will consist of two members whose terms expire on August 31, 2002; two members whose terms expire on August 31, 2003; and three members whose terms expire on August 31, 2004. In appointing members, the commission may consider all relevant facts, including the desirability of geographic and occupational diversity.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Section 1.83 of this subchapter does not apply to the Border Trade Advisory Committee.

(6) Duration. The Border Trade Advisory Committee is abolished December 31, 2005, unless the commission amends its rules to provide for a different date.

§1.85. Department Advisory Committees.

(a) Creation.

(1) (No change.)

~~[(2) Statewide Transportation Policy Committee.]~~

~~[(A) Purpose. Transportation Code, §201.601, and 23 United States Code §135 require the department to develop a statewide multimodal transportation plan that encompasses all modes of transportation. Federal law further provides that in developing the plan the department must seek public input from interested parties. To comply with these requirements, the Statewide Transportation Policy Committee, to be composed of private transportation providers and other governmental agencies and individuals concerned with transportation, will advise the department on its statewide transportation plan. The committee will provide a forum for identifying issues to be addressed by the planning process and for providing input into the department's planning process. The committee members represent a constituency of interests and in this way broaden input into the planning process.]~~

~~[(B) Duties. The committee shall:]~~

~~*[(i)* review and comment on issue papers prepared as part of developing recommended goals for Texas' transportation system;]~~

~~*[(ii)* review and comment on the draft statewide transportation plan;]~~

~~*[(iii)* have its members serve as chairs of issue committees to develop and explore issues that pertain to the statewide transportation planning process; and]~~

~~*[(iv)* provide logistical assistance such as furnishing data and existing planning materials.]~~

~~[(C) Manner of reporting. The committee shall report its advice and recommendations to the commission.]~~

~~[(D) Statewide transportation policy issue committees.]~~

~~*[(i)* The Statewide Transportation Policy Committee may appoint one or more issue committees to advise it on specific planning issues, such as environmental, intermodal, financial, and special transportation needs.]~~

~~*[(ii)* An issue committee shall report its advice and recommendations to the Statewide Transportation Policy Committee.]~~

(2) ~~[(3)]~~ Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to [~~the~~] Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) ~~[(4)]~~ Intelligent Transportation Systems (ITS) Steering Committees.

(A) Purpose. Federal law encourages the expenditure of federal transportation funds to achieve improvements in the efficiency of transportation operations. A portion of these funds are specifically designated for the planning and testing of Intelligent Transportation Systems technologies. As part of the development and implementation of these projects, a district engineer, in conjunction with local officials, may create a steering committee to provide support for ITS activities. Advice and recommendations expressed by a committee will foster the coordination of state and local benefit in the design, maintenance, and operation of ITS facilities.

(B) Duties. A committee shall provide advice and recommendations with respect to:

(i) ITS project priorities;

(ii) the approval of projects;

(iii) seeking project funding;

(iv) coordinating public and private ventures; and

(v) promoting ITS at local, state, and national levels.

(C) Manner of reporting. A committee shall report its advice and recommendations to the local district engineer, or the district engineer's designee.

(4) ~~[(5)]~~ Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues. By involving representatives of the public, including bicyclists, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development

of departmental policies affecting bicycle use, including the design, construction and maintenance of highways.

(B) Duties. The committee shall review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission.

(D) Reimbursement. The department may reimburse a member of the Bicycle Advisory Committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(b) (No change.)

(c) Duration. Except as otherwise specified in this subsection, a committee created under this section is abolished December 31, 2003, [~~2001~~] unless the commission amends its rules to provide for a different date [~~continued in existence by affirmative vote of the commission~~].

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

Filed with the Office of the Secretary of State, on October 8, 2001.

TRD-200106045
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 18, 2001
For further information, please call: (512) 463-8630

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ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 59. COLLECTIONS

1 TAC §§59.1 - 59.3

The Office of the Attorney General (OAG) adopts amendments to 1 TAC §§59.1 - 59.3, relating to the referral and collection of delinquent obligations owed to the state with no changes to the proposed text as published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6197). Section 59.1 adopts a standard form for a local taxing authority to authorize the OAG to represent it in tax collection suits as provided in the tax code. Section 59.2 adopts uniform guidelines for state agency referral of delinquent collections to the OAG. Section 59.3 sets standards and guidelines for the reporting of delinquent obligations owed to the state to the OAG as required by law.

Section 59.1 as amended specifies that the rule also applies to special purpose districts referenced under the Texas Tax Code, Title 3, and changes the name of the OAG division to which the authorization is given to the Bankruptcy and Collections Division.

Section 59.2 as amended changes the name of the OAG division receiving referrals of delinquent state agency obligations to the Bankruptcy and Collections Division, and refers to the reporting requirements adopted in §59.3.

Section 59.3 as amended changes the name of the OAG division receiving referrals of delinquent state agency obligations to the Bankruptcy and Collections Division and adopts accounting standards for uncollectible accounts previously promulgated by the Comptroller of Public Accounts.

No comments were received concerning the proposed amendments during the comment period.

The amendment to §59.1 is adopted under the Texas Tax Code, Title 3, which the OAG interprets as authorizing the Office of the Attorney General to adopt rules reasonable and necessary to implement Title 3. The amendment to §59.2 is adopted under §2107.002(c), Texas Government Code. The amendment to §59.3 is adopted under §2107.005, Texas Government Code.

Sections 321.309, 322.206 and 323.309, Texas Tax Code, are affected by the adopted amendment to 1 TAC §59.1. Section 2107.002, Texas Government Code, is affected by the adopted amendment to 1 TAC §59.2. Section 2107.005, Texas Government Code, is affected by the adopted amendment to 1 TAC §59.3.

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 October 3, 2001.

TRD-200105990
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Effective date: October 23, 2001
Proposal publication date: August 24, 2001
For further information, please call: A.G. Younger, Agency Liaison at (512) 463-2110

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS
SUBCHAPTER B. REGISTRATION PROCEDURES

1 TAC §102.17

The Office of the Secretary of State adopts the repeal of §102.17, concerning the procedure for the registration of certain health facilities without changes to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6073).

The purpose of the repeal is to conform Subchapter B to procedures specified in §702.201 and §702.202 of the Texas Occupations Code for establishing an exemption from the security requirements of Subchapter D of the Occupations Code.

No comments were received concerning the proposed repeal.

The repeal is adopted under the Texas Government Code, §2001.004(1) and the Health Spa Act, Texas Occupations Code, §702.051 which provide the Secretary of State with the authority to prescribe and adopt rules.

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

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 October 2, 2001.

TRD-200105953
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: October 22, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 475-0775

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1 TAC §102.18

The Office of the Secretary of State adopts new §102.18, concerning the filing of an application for an exemption from security requirements without changes to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6073).

The new rule is adopted in order to clarify the procedure for applying and qualifying for an exemption from the security requirements specified in §702.151 of the Texas Occupations Code.

No comments were received regarding the new section.

The new section is adopted under the Texas Government Code, §2001.004(1) and the Health Spa Act, Texas Occupations Code, §702.051 which provide the Secretary of State with the authority to prescribe and adopt rules.

The amendment affects the Texas Occupations Code, §§702.201, 702.202 and 702.205.

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 October 2, 2001.

TRD-200105954
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: October 22, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 475-0775

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SUBCHAPTER D. SECURITY

1 TAC §102.35

The Office of the Secretary of State adopts an amendment to §102.35, with changes to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6074). The change reflects the "Correction of Error" published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6798) which stated that in the new subsection (d) the phrase "after first deducting the actual costs for publication of the notice" should have been published with strikeout lines to indicate that the text was proposed for deletion. The August 17, 2001, publication did indicate the deletion of this phrase in the new subsection (j), but inadvertently omitted the deletion of the phrase in the new subsection (d).

The amendment to §102.35 concerns the adjudication of members' claims when a health spa has ceased operations. The amendment is adopted to conform §102.35 to amendments to Chapter 702 of the Occupations Code that were made by the 77th Texas Legislature in Senate Bill 1318.

No comments were received concerning the proposed amendment.

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

The amendment affects the Texas Occupations Code, §§702.253, 702.254, and 702.452.

§102.35. Adjudication of Claims.

(a) Within 10 days of receiving notice that a health spa which has posted a security with the secretary has ceased operations, the secretary shall notify the surety or obligor that:

(1) the health spa has ceased operations;

(2) members of the health spa may have suffered financial losses within the meaning of the Act and these rules; and

(3) the secretary intends to inform the registrant that the registrant must post a notice at the health spa location notifying the public of the fact that the health spa is closed and that a health spa member has 90 days from the date the notice is first posted to perfect a claim under the security posted.

(b) The notice must be:

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

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

(3) posted continuously for at least 14 days.

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

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

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

(f) The secretary shall timely present claims together with an administrative order for payment by the surety or obligor.

(g) Actual financial loss shall mean and be limited to those sums which have been paid under a health spa contract to a registrant or a registrant's assignee and which at the time the health spa is closed

are unearned. Actual financial losses shall be calculated by multiplying the gross monthly payment by the total of months or partial months remaining on a contract at the time of closing minus any payments not made. For the purposes of this section the following terms shall have the following meanings.

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

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

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

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

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

(j) In the event the total of claims exceed the amount of the security, the claims shall be paid on a pro rata basis by dividing the amount of the security by the total amount of the claims. This percentage shall be applied to each claim.

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 October 2, 2001.

TRD-200105955
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: October 22, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 475-0775

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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 amendments to §35.1 and §35.2, concerning A Guide to Operations and A Guide to Programs and Services, without changes to the proposed text as published in the September 7, 2001, issue of the *Texas Register* (26 TexReg 6815) and will not be republished. Previously, the Texas Commission on the Arts, adopted amendments to §35.1 and §35.2 on an emergency basis in the September 7, 2001, issue of the *Texas Register* (26 TexReg 6811). This adoption will supersede the emergency amendments upon the effective date of this amendment.

The amendments are adopted to be consistent with changes to programs and services of the commission as outlined in A Guide to Operations, Programs and Services as amended September 2001.

No comments were received regarding adoption of the rules.

The amendments are adopted 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.

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 October 8, 2001.

TRD-200106047
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: October 28, 2001
Proposal publication date: September 7, 2001
For further information, please call: (512) 463-5535

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CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22 - 37.24, 37.26, 37.28, 37.29

The Texas Commission on the Arts adopts amendments to §§37.22 - 37.24, 37.26 and 37.28, concerning Application Forms and Instructions for Financial Assistance, without changes to the proposed text as published in the September 7, 2001, issue of the *Texas Register* (26 TexReg 6816) and will not be republished. The Texas Commission on the Arts also adopts new §37.29, concerning Application Forms and Instructions for Young Masters Program, without changes to the proposed text as published in the September 7, 2001, issue of the *Texas Register* (26 TexReg 6816) and will not be republished. Previously, the Texas Commission on the Arts, adopted amendments to §37.22 - 37.24, 37.26 and 37.28 and new §37.29 on an emergency basis in the September 7, 2001, issue of the *Texas Register* (26 TexReg 6811). This adoption will supersede the emergency amendments and new rule upon the effective date of these amendments and new rule.

The amendments and new rule are adopted to be consistent with changes to programs and services of the commission as outlined in A Guide to Operations, Programs and Services as amended September 2001.

No comments were received regarding adoption of the rules.

The amendments and new rule are adopted 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.

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 October 8, 2001.

TRD-200106048
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: October 28, 2001
Proposal publication date: September 7, 2001
For further information, please call: (512) 463-5535

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG) AND LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas adopts amendments to §§13.1-13.4, 13.22, 13.25, 13.35, 13.36, 13.61, 13.69, 13.70, 13.71, 13.73, and 13.141 relating to Scope; Retroactivity; Definitions; CNG Forms; Odorization; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; Licenses, Related Fees, and Licensing Requirements; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Denial, Suspension, or Revocation of Licenses or Certifications and Hearings; Other Fees for Employee Transfer and Decal Replacement; and System Testing, without changes to the versions published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6219), and adopts §13.24, relating to Filings Required for School Bus, Mass Transit, and Special Transit Installations, with one change to the version published in that same issue.

The main purpose of the rulemaking is to update the rules based on changes to the Commission's authorizing statutes made by Senate Bill (SB) 310, 77th Legislature (2001). The statutory changes require corresponding amendments to §13.61, relating to license and license renewal requirements. Adopted amendments in §13.61(i)(1) - (3) reflect changes to the statute and require the Commission to notify a licensee of the impending license expiration at least 30 days before the date the person's license is scheduled to expire; require a renewal fee of 1 1/2 or two times the renewal fee required in §13.61(b)(1) - (6) if a person's license has been expired for 90 calendar days or fewer, or more than 90 days, respectively; and change the time limit for license expiration, suspension, or revocation from two years to one year. The amendment in §13.61(b)(3) requires a person whose license has been expired for more than one year, changed from two years, to comply with all requirements for issuance of a new license. New §13.61(i)(4) exempts from reexamination for licensing a person who was previously licensed in this state but who currently lives in another state and is currently licensed and has been in practice in the other state for the two years preceding the date of application, and requires the person to pay a fee to the Commission that is equal to two times the renewal fee required in §13.61(b).

The Commission adopts substantive amendments to some sections for reasons other than legislative action. In particular, amendments to §13.3, relating to definitions, include a new definition for "container," which is based on industry standards; the deletion of definitions for "final approval" and "tentative approval" and a new definition for "interim approval order" to clarify that the Commission does not engage in professional engineering, discussed in more detail in the next paragraph.

In §§13.3, 13.24, and 13.25, adopted amendments change language that might be understood as referring to professional engineering activities. These changes will also make the CNG rules as consistent as possible with the Commission's LP-gas rules (16 TAC Chapter 9), particularly with regard to Commission procedures, deadlines, and fees. The definitions for "final approval" and "tentative approval" in §13.3 and the Commission review of plans and specifications for stationary installations and CNG vehicles in §§13.24 and 13.25 are deleted. A new definition for "interim approval order" is proposed to be added to §13.3 to address a new procedure specified in §13.25(d). Also, new §13.24(d) allows the Commission to assess an inspection fee in certain instances to cover its costs for additional inspections.

Also, the Commission does not adopt any language referring to the practice of engineering (such as "sound engineering practices" or "good engineering practices," for example) and has clarified existing language that prohibits the practice of engineering. In order to achieve this goal, wording such as "plans and specifications" has been deleted to avoid any possible confusion. Likewise, in §13.24, regarding school buses and other similar vehicles, the Commission has deleted the submission of plans and specifications, but has added a requirement for these types of vehicles to be inspected by Commission personnel prior to being placed into CNG service in order to ensure compliance with the *Regulations for Compressed Natural Gas*.

In §13.25, most amendments are adopted to make this rule consistent with the similar LP-gas rule. Section 13.25(b) includes new language regarding the submission of forms and other information (such as a plat drawing and site plan) at least 30 days prior to construction of installations with aggregate storage capacity in excess of 240 standard cubic feet water volume. In subsection (h)(3), a one-year expiration date is added, as found in the corresponding LP-gas rule; this will enable the Commission to keep its records current and to close files for which no activity is occurring. New subsection (k) adds the inspection fee for certain instances, as proposed in §13.24 for school bus and other vehicle-type installations. All other amendments to §13.25 are nonsubstantive and are made for clarification and for consistency with the corresponding LP- gas rules.

In addition to the adopted amendments previously discussed for §13.61, existing language in subsections (b) and (j) is deleted because staggered licensing has been in place for several years and the explanation for it is no longer needed.

Section 13.69 relates to registration of CNG transports and requires CNG transports to be registered with the Commission and specifies the fees required to be paid and forms to be filed with the Commission for these activities. New subsection (c) clarifies that either a decal or a letter of authority issued by the Commission shall serve to verify that a particular CNG transport has been properly registered. New subsection (c)(3) allows small amounts of CNG to be introduced into a container in certain instances.

Adopted amendments to §§13.1, 13.2, 13.4, 13.22, 13.35, 13.36, 13.70, 13.71, 13.73, and 13.141 are mostly nonsubstantive and conform the rules to current *Texas Register* formatting requirements, update citations or references or other terms, specify in the rules certain procedures in place at the Commission, or include other changes in wording, punctuation, or organization to clarify the rules. Examples of nonsubstantive amendments include changing "LP-Gas Division" to "LP-Gas Section" or "Gas Services Division," as appropriate, and correcting statutory references. While there are many amendments to §13.35, most do not change current Commission procedure and are adopted to make this rule, which deals with an administrative procedure, as clear as possible and consistent with the corresponding LP-gas rule.

The adopted amendments to §13.70 are mostly nonsubstantive and are made for clarification. New subsection (a)(4) allows applicants to take CNG examinations at the Commission's district offices in certain cases, a practice allowed in the LP-gas rules. One important change in subsection (b)(5) changes the maximum time period for an expired general installers and repairman exemption from two years to one year; the Commission adopts this amendment to be consistent with the changes in §13.61 necessitated by SB 310.

The adopted amendment to §13.73 deletes subsection (b), which is covered in new language added to §13.69(c)(5), and amends the title of §13.73 accordingly.

Also, in a separate action, the Commission adopts the rule review for Chapter 13, Subchapters A through F, required under Tex. Gov't Code, Chapter 2001, §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*). The separate rule review documents will be filed with the *Texas Register* concurrently with this rulemaking.

The Commission received one comment on the proposed amendments from the Commission's CNG advisory committee. For clarification, the committee suggested that the word "subsequent" be added to the beginning of the third sentence in §13.24(b). The Commission agrees and has added this word, so that the sentence as adopted reads, "Subsequent inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the *Regulations for Compressed Natural Gas*." The Commission received no comments on the proposed rule review.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §§13.1 - 13.4

The amendments are adopted under Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., Ch. 558, §1*); under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; and under Sections 54- 60, Senate Bill 310, 77th Legislature (2001).

Texas Natural Resources Code, Chapter 116, as amended by Sections 54-60, Senate Bill 310, 77th Legislature (2001) is affected by the adopted amendments.

Issued in Austin, Texas, on October 2, 2001.

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 October 2, 2001.

TRD-200105956
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: October 22, 2001
Proposal publication date: August 24, 2001
For further information, please call: (512) 475-1295

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SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.22, 13.24, 13.25, 13.35, 13.36

The amendments are adopted under Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., Ch. 558, §1*); under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; and under Sections 54- 60, Senate Bill 310, 77th Legislature (2001).

Texas Natural Resources Code, Chapter 116, as amended by Sections 54-60, Senate Bill 310, 77th Legislature (2001) is affected by the adopted amendments.

Issued in Austin, Texas, on October 2, 2001.

§13.24. Filings Required for School Bus, Mass Transit, and Special Transit Installations.

(a) After the manufacture of or the conversion to a CNG system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify the Commission in writing on CNG Form 1503 that the applicable CNG-powered vehicles are ready for a complete inspection to determine compliance with the *Regulations for Compressed Natural Gas*.

(b) If the Commission's initial complete inspection finds the vehicle in compliance with the *Regulations for Compressed Natural Gas* and the statutes, the vehicle may be placed into CNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Subsequent inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the *Regulations for Compressed Natural Gas*. If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into CNG service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with the Commission documentation demonstrating compliance with the *Regulations for Compressed Natural Gas*, or the Commission shall conduct another complete inspection before the vehicle may be placed into CNG service.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the *Regulations for Compressed Natural Gas*, statutes, and any other local, state, or federal requirements.

(d) If the requested Commission inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate

consumer, the Commission shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61, 13.69, 13.70, 13.71, 13.73

The amendments are adopted under Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., Ch. 558, §1*); under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; and under Sections 54- 60, Senate Bill 310, 77th Legislature (2001).

Texas Natural Resources Code, Chapter 116, as amended by Sections 54-60, Senate Bill 310, 77th Legislature (2001) is affected by the adopted amendments.

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SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §13.141

The amendments are adopted under Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., Ch. 558, §1*); under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; and under Sections 54- 60, Senate Bill 310, 77th Legislature (2001).

Texas Natural Resources Code, Chapter 116, as amended by Sections 54-60, Senate Bill 310, 77th Legislature (2001) is affected by the adopted amendments.

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CHAPTER 20. ADMINISTRATION

SUBCHAPTER F. METHODS OF MAKING PAYMENTS TO THE COMMISSION

16 TAC §20.501

The Railroad Commission of Texas (Commission) adopts new §20.501, relating to payment of convenience fees, without changes to the version published in the August 10, 2001, issue of the *Texas Register* (26 TexReg 5933). The new rule will be in new subchapter F to be titled "Methods of Making Payments to the Commission" and will apply to all entities making payments to the Commission using a method that requires electronic payment processing and that results in the Commission incurring transaction costs. The new rule will allow the Commission to implement additional payment methods over the Internet at no additional cost to the state.

The Commission received no comments on the proposal.

The Commission adopts the new section pursuant to Texas Civil Statutes, Article 6447n, which authorizes the Commission to accept electronic payments and to impose a service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

Texas Civil Statutes, Article 6447n, is affected by the adopted new section.

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

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new §25.129, relating to Pulse Metering, and amendments to §25.341, relating to Definitions, and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities, with changes to the proposed text as published in the July 27, 2001 *Texas Register* (26 TexReg 5554). The rule and amendments are necessary to facilitate customer access to electric pulses under standard terms and conditions. The rule will allow customers and their agents to have access to pulses under standard terms and conditions set forth in the Agreement and Terms and Conditions for Pulse Metering Equipment Installation (PMEI agreement). This new section and amendments are adopted under Project Number 23952.

A public hearing on the proposed new section and amendments was held at commission offices on Tuesday, August 28, 2001 at 10:00 a.m. Representatives from American Electric Power (AEP), Automated Energy Incorporated (AEI), Frontier Associates (Frontier), State of Texas represented by the Attorney Generals Office (State), and Texas Utilities (TXU) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed new section and amendments from AEP, Joint Comments from AEI and the State of Texas (State and AEI), El Paso Electric Company (El Paso), Frontier, Reliant Energy HL&P (Reliant), and TXU.

In the preamble to the proposed rule, the commission posed the following question:

Will the proposed clarifications to the definitions of pulse metering equipment, electrical pulse, and electrical pulse service also remove any barriers that certain utilities have faced in providing customers and their authorized representatives with access to data stored within the meter?

The State and AEI understood that the purpose of the existing rule language was to ensure that the regulated utility could not use pulse from the meter to offer additional services that are properly competitive energy services, such as the kind of reformatting, analysis and response offered by AEI. The State and AEI concluded that while the competitive energy service dockets accomplished that result, unfortunately some utility's orders went further due to differing interpretations of the rule language, and these utilities concluded that the utility could not offer customers and their representatives access to pulses from the revenue meter. The State and AEI believed that neither the legislature nor the commission could possibly have intended for the same statutory and rule language to (1) allow TXU to provide a broad pulse service from the revenue meter, (2) for Reliant to offer a more limited pulse service, and (3) for AEP to offer no pulse service. Consequently, they agreed that the rule should allow customers of every utility the right to obtain access to their own pulse data from the revenue meter.

AEP believed this question to be directed to them since they would be the only utility that would not provide pulse metering services, even to grandfathered customers after January 1, 2002. AEP commented that it believes the changes to §25.341, relating to Definitions, will allow the AEP companies to provide access to billing meter pulses without requiring them to seek an exception from the order in Docket Number 21989, *Competitive Energy Services Issues Severed from Application of Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company for Approval of its Plan to Implement Business Separation as Required Under Section 39.051 of the Public Utility Regulatory Act*. That order required the company to close its pulse metering tariffs to new customers before September 1, 2000 and continue existing pulse metering services to existing customers only through January 1, 2002. AEP stated that it believed that the proposed changes to §25.341(6)(G) and §25.341(9) and (10) work together to distinguish electric pulse service from the access to the electrical pulses themselves. Further, adding the definition of pulse metering equipment and stating that it shall not be a competitive service creates an exemption for the access to such pulses for the purposes envisioned under the rule.

AEP closed its pulse metering service tariff in accordance with the commission's previous order and therefore no longer has a valid tariff for bundled service that allows for the expansion of this service to new customers through the end of 2001. AEP added in the public hearing that it planned to file a new tariff for providing pulse access that will contain fixed prices for a normal installation.

Reliant agreed with AEP that the proposed amendment to §25.341, concerning utility ownership of pulse metering equipment, will remove an important barrier to the accessibility of pulse metering service by end-use customers. Reliant was prohibited from owning pulse metering equipment as a result of the commission's order in Docket Number 21985, *Competitive Energy Services Issues Severed from Application of Reliant Energy, Incorporated Business Separation Plan Filing Package*. Reliant also noted that language should be added to the preamble stating that any preceding orders of the commission are superseded to the extent that they conflict with the provisions of the substantive rule amendments adopted in this project.

The commission agrees with the State and AEI that the commission's rules were not intended to produce such a wide variation in terms of service of pulse access by utilities statewide. The commission believes the intent was to prohibit the utilities from providing services that could readily be provided by other parties. The commission determines that any manipulation or transformation is a competitive energy service. This transformation of the pulse data from raw form can be provided by other service providers, and it is a competitive energy service; therefore, it cannot be provided by the utility.

However, until metering becomes competitive, the utility is required to own and maintain the billing meters. Therefore, the utility is the proper party to install new meters, if required, and to install pulse metering equipment at the customer's or customers representative's request so the customer may have access to its pulse data in raw form. Where previous orders of the commission deviate from this new rule and agreement and the amendments adopted in this project, the previous orders are superseded to the extent they conflict with the provisions adopted in this project.

Comments on specific sections of the rules

§25.129, Pulse Metering

Subsection (b), Application

El Paso requested a change to subsection (b) to allow an exemption for an electric utility under the Public Utility Regulatory Act (PURA) §39.102 until the termination of its rate freeze period. El Paso took the position that consistent with its base rate freeze under Docket Number 12700, *Application of El Paso Electric Company for Authority to Change Rates*, and its statutory exemption under PURA §39.102(c), the commission's substantive rule §25.129 does not apply to El Paso. El Paso commented that §25.346 already states that the section "shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period." El Paso suggested the addition of a sentence identical to that found in §25.346(b) be added to §25.129(b).

The State and AEI do not object to El Paso's proposal, given El Paso's unique situation at this time.

The overall purpose of this rulemaking proceeding is to continue pulse access as a regulated service offered by utilities. It is a service that has value to customers in a competitive environment but many utilities have provided the service and customers have found it beneficial in a regulated environment. El Paso failed to provide information that would show that compliance with §25.129 would cause it harm. Additionally, as part of the Stipulation parties entered into in Docket Number 12700, tariff filings, such as those for pulse metering, a special service, are not subject to the rate freeze as long as there is no increase to the Texas retail rates charged to any rate class subject to the rate freeze. Because there are significant benefits to customers in having access to pulses, the commission determines that all of Texas should have a standardized policy on pulse metering. The commission concludes that El Paso should file a tariff for the provision of pulse equipment and installation and work with staff to develop a pulse metering installation agreement by December 15, 2001 consistent with El Paso's regulatory status.

Subsection (d), Filing requirements for tariffs

El Paso proposed that the references to "utility" be changed to "T&D Utility." The State and AEI agreed that this change was appropriate.

The commission agrees that this change is appropriate and makes the suggested change to the rule.

AEP stated in its initial comments that it did not support the requirement to file pulse metering tariffs "that contain a schedule detailing the charges." AEP stated that the agreement reached with other interested parties was to drop this language as a tariff filing requirement and to add §25.129(d)(1), which requires the utilities to file a schedule of charges calculated pursuant to each utility's approved tariffs for providing such service. The State and AEI did not agree with AEP's interpretation that interested parties had agreed that the schedule of charges need not be tariffed. The State and AEI commented that fixed prices in the tariff were necessary.

The State and AEI noted that letting the T&D utility decide the specific charges outside of a tariff proceeding would kill the market for all but the most determined customers. The State and AEI contended that obtaining pulses from the revenue meter would be a monopoly service available only from the utility, and the rates should be published in a tariff. They further argued that if rates are not published in a tariff the only recourse for the customer or customer's representative would be to file a complaint with the commission, in each individual instance.

AEP, at the public hearing, agreed that it would file a fixed price tariff.

The commission determines that it is important to customers and new providers that access to pulses be as easy and as inexpensive as possible in order for the market for services to develop. A potential provider may choose not to offer special services to the customer if it is required to negotiate on a case-by-case basis with the utility on what the installation charges will be. Therefore, the commission determines that fixed prices published in the utility's tariff are essential. The commission makes clarifying changes to the rule.

AEP asserted that a rulemaking is not the proper forum for developing a tariff and that requiring a tariff filing in this rulemaking will create a new tariff that could be in conflict with a tariff that already exists in a TDU's Tariff for Retail Delivery Service.

The State and AEI replied that the rule would require each utility to file a tariff, which would be processed in a tariff proceeding, not as a rulemaking. The State and AEI pointed out that AEP referred to a conflict between its current tariff and the new tariff as "potential" and provided no explanation or example. If a possible conflict did emerge, the State and AEI suggested it could be addressed in AEP's drafting of its pulse access tariff or in the tariff proceeding.

The commission determines that filing a tariff with fixed prices is essential, as discussed above. The tariffs required to be filed will not be filed under this project number but will be filed individually in tariff proceedings.

AEP stated that AEP companies no longer have a valid tariff in their respective Manual of Tariffs for bundled service that allows for the expansion of this service to new customers through the end of 2001. It proposed to solve the problem through a commission order authorizing AEP to apply its approved unbundled cost of service (UCOS) tariff to pulse access effective with the final approval of this rule.

The State and AEI stated that as long as the AEP UCOS tariff's applicability to pulse access is limited to the short interval before AEP's pulse access tariff takes effect, it does not object to allowing AEP to use its UCOS tariff. They contended that the commission order should specify that AEP is required to comply with the adopted rules and PMEI agreement, and the rules and agreement supersede inconsistent provisions of its UCOS tariff.

It appears that the portions of AEP's UCOS tariff that AEP intended to apply to pulse services are not consistent with this rule. If that is the case, the tariff should not go into effect for pulse services. AEP's current tariff does not contain fixed prices for installation or equipment, leaving the customer to bear the transaction costs of negotiating rates for service. The current tariff allows AEP at its discretion to decide whether to provide pulse access at all. In other words, the objectives of this rulemaking proceeding may be frustrated in the AEP areas, if the proposed UCOS tariff goes into effect and is applied to pulse services. Because the tariff has been developed in a contested-case rate proceeding, the question of whether to put the tariff into effect should be resolved in the rate proceeding or the tariff-approval docket. AEP has agreed to file an appropriate tariff for pulse services in accordance with this rule.

§25.341, Definitions

Paragraph (18), Pulse Metering Equipment

TXU stated that pulses generated by pulse equipment have no "value." TXU believes the amount of energy is measured by the number of pulses; therefore, the word "value" should be replaced by the word "number" in the definition of pulse metering equipment. TXU stated that "competitive services" in the last sentence of paragraph (18) should be replaced with "competitive energy services" to be consistent with the defined term in paragraph (6). Reliant agreed with TXU's proposed changes, and the State and AEI had no objections to the changes.

The commission agrees with TXU and makes the suggested changes.

§25.346, Separation of Electric Utility Metering and Billing Service Costs and Activities

Subsection (g), Separation of transmission and distribution utility metering system service activities

Paragraph (1)(B)

TXU suggested that §24.346(g)(1)(B) should be modified to include an exception so that the utility may use the pulses for billing settlement and systems operations and planning, consistent with the commission's proposed amendment to §25.346(g)(2)(D)(ii). Reliant agreed with TXU's proposed change, and State and AEI did not object to the change.

The commission agrees that this change suggested by TXU is appropriate and consistent with §25.346(g)(2)(D)(ii).

Paragraph (2)(D)(vii)

TXU and Reliant agree that the term "requesting customer" should be changed to "entity requesting such service." TXU stated that the charges for pulse metering equipment, installations and removal can be the responsibility of a retail electric provider or authorized representative; therefore the term "requesting customer" can be misleading. The State and AEI proposed that the language be changed to "entity executing the agreement and requesting such service" in order to conform to the PMEI agreement and to make clear who is responsible for pulse access charges. TXU stated at the public hearing that it would not oppose this change.

The commission agrees that the term "requesting customer" is not always appropriate, as the charges are actually paid by the entity executing the pulse metering equipment installation agreement. The commission modifies the rule accordingly.

Pulse Metering Equipment Installation Agreement

Reliant commented that reasonable, well-understood terms and conditions applicable to providing retail customers access to pulse metering service will also remove a potential barrier to the use of such services. Reliant supported the implementation of the terms and conditions contained in this agreement.

TXU suggested a change to clarify that this agreement is not a request for service. Reliant stated that TXU's proposed language more accurately conveys the intent of parties concerning the time frame within which utilities are to complete pulse metering installations after such requests are made by their customers.

The commission agrees that the change proposed by TXU more accurately describes the timeline for installation of pulse metering equipment and makes this section more clear. Therefore, the commission makes the change to the agreement suggested by TXU.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER F. METERING

16 TAC §25.129

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.001, which requires the commission to establish rules to protect retail customers from fraudulent, unfair, misleading, deceptive or anticompetitive practices; §31.001, which requires the commission to formulate rules, policies, and principles and apply them to protect the public interest in a more competitive marketplace; §39.102, which provides that retail customers in the state shall have customer choice on and after January 1, 2002; §39.104, which provides that the commission may prescribe terms and conditions it considers necessary to prohibit anticompetitive practices and encourage customer choice under the customer choice pilot projects; §39.051, which grants the commission authority to request each electric utility to unbundle in a manner consistent with PURA §39.157(d); §39.107, which provides that metering services should be provided by the transmission and distribution utility; and §39.201, which grants the commission authority to request electric utilities' supporting cost data for determination of nonbypassable delivery charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, 17.001, 31.001, 39.051, 39.102, 39.104, 39.107, and 39.201.

§25.129. Pulse Metering.

(a) Purpose. The purpose of this section is to facilitate customer access to electrical pulse (pulse) as defined in §25.341 of this title (relating to Definitions) under terms and conditions specified in subsection (c) of this section.

(b) Application. This section applies to transmission and distribution (T&D) utilities, except river authorities. Each T&D utility shall provide access to pulse from the revenue meter and shall provide pulse access in accordance with an Agreement and Terms and Conditions for Pulse Metering Equipment Installation (PMEI agreement), as approved by the commission for all requesting customers.

(c) Commission approved pulse metering agreement. Each T&D utility shall provide pulse metering equipment pursuant to the PMEI agreement as approved by the commission.

(d) Filing requirements for tariffs. No later than 15 days after the effective date of this section, each T&D utility that does not have a tariff that contains a schedule detailing the charges for providing pulse metering equipment, installation and replacement and, if offered, equipment maintenance shall file a tariff or tariffs containing a schedule detailing the charges for providing pulse metering equipment, installation, and replacement and, if offered, equipment maintenance. The tariff shall conform to the commission rules and the PMEI agreement. Concurrent with the tariff filing in this section, each T&D utility that does not have an approved tariff that contains a schedule detailing the charges for providing pulse metering equipment, installation and, if offered, equipment maintenance shall submit all supporting data for the charges. No later than 15 days after the effective date of this section, each utility shall submit the PMEI agreement as described in subsection (c) of this section and approved by the commission.

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

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Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER O. UNBUNDLING AND MARKET POWER
DIVISION 1. UNBUNDLING

16 TAC §25.341, §25.346

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.001, which requires the commission to establish rules to protect retail customers from fraudulent, unfair, misleading, deceptive or anticompetitive practices; §31.001, which requires the commission to formulate rules, policies, and principles and apply them to protect the public interest in a more competitive marketplace; §39.102, which provides that retail customers in the state shall have customer choice on and after January 1, 2002; §39.104, which provides that the commission may prescribe terms and conditions it considers necessary to prohibit anticompetitive practices and encourage customer choice under the customer choice pilot projects; §39.051, which grants the commission authority to request each electric utility to unbundle in a manner consistent with PURA §39.157(d); §39.107, which provides that metering services should be provided by the transmission and distribution utility; and §39.201, which grants the commission authority to request electric utilities' supporting cost data for determination of nonbypassable delivery charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, 17.001, 31.001, 39.051, 39.102, 39.104, 39.107, and 39.201.

§25.341. Definitions.

The following words and terms, when used in Division I of this subchapter (relating to Unbundling and Market Power), shall have the following meanings, unless the context clearly indicates otherwise:

(1) Above market purchased power costs - Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected utilities - A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with the Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by the Public Utility Regulatory Act (PURA) §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) this state or an agency of this state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(3) Advanced metering - Includes any metering equipment or services that are not transmission and distribution utility metering system services as defined in this section.

(4) Additional retail billing services - Retail billing services necessary for the provision of services as prescribed under PURA §39.107(e) but not included in the definition of transmission and distribution utility billing system services under this section.

(5) Competition transition charge (CTC) - Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(6) Competitive energy services - Customer energy services business activities which are capable of being provided on a competitive basis in the retail market. Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to:

(A) energy-consuming, customer-premise equipment;

(B) the provision of energy efficiency and control of dispatchable load management services;

(C) the provision of technical assistance relating to any customer- premises process or device that consumes electricity, including energy audits;

(D) customer or facility specific energy efficiency, energy conservation, power quality and reliability equipment and related diagnostic services;

(E) the provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;

(F) customer-premises transformation equipment, power-generation equipment and related services;

(G) the provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including electrical pulse service, provided however that the provision of access to pulses from a meter used to measure electric service for billing in accordance with §25.129 of this title (relating to Pulse Metering), shall not be considered a competitive energy service;

(H) communications services related to any energy service not essential for the retail sale of electricity;

(I) home and property security services;

(J) non-roadway, outdoor security lighting, except for the provision of service until January 1, 2002 to customers that were receiving such service on September 1, 2000;

(K) building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;

(L) hedging and risk management services;

(M) propane and other energy-based services;

(N) retail marketing, selling, demonstration, and merchant activities;

(O) facilities operations and management;

(P) controls and other premises energy management systems, environmental control systems, and related services;

(Q) premise energy or fuel storage facilities;

(R) performance contracting (commercial, institutional and industrial);

(S) indoor air quality products (including, but not limited to air filtration, electronic and electrostatic filters, and humidifiers);

(T) duct sealing and duct cleaning;

(U) air balancing;

(V) customer-premise metering equipment and related services other than as required for the measurement of electric energy necessary for the rendering of a monthly electric bill; and

(W) other activities identified by the commission.

(7) Discretionary service - Service that is related to, but not essential to, the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third party facilities.

(8) Distribution - For purposes of §25.344(g)(2)(C) of this title (relating to Cost Separation Proceedings), distribution relates to system and discretionary services associated with facilities below 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third party electric grid facilities, to the point of interconnection with a retail customer or other third party facilities, and related processes necessary to perform such transformation and movement. Distribution does not include activities related to transmission and distribution utility billing services, additional billing services, transmission and distribution utility metering services, and transmission and distribution customer services as defined by this section.

(9) Electrical pulse (or pulse) - The impulses or signals generated by pulse metering equipment, indicating a finite value, such as energy, registered at a point of delivery as defined in the Tariff for Retail Delivery Service.

(10) Electrical pulse service - Use of pulses for any purpose other than for billing, settlement, and system operations and planning.

(11) Electronic data interchange - The computer application to computer application exchange of business information in a standard format.

(12) Energy service - As defined in §25.223 of this title (relating to Unbundling of Energy Service).

(13) Existing purchased power contract - A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(14) Generation - For purpose of §25.344(g)(2)(A) of this title, generation includes assets, activities and processes necessary and related to the production of electricity for sale. Generation begins with the acquisition of fuels and their conversion to electricity and ends where the generation company's facilities tie into the facilities of the transmission and distribution system.

(15) Generation assets - All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(16) Market value - For non-nuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(17) Power generation company - A person that:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6); and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(18) Pulse metering equipment - Any device, mechanical or electronic, connected to a meter, used to measure electric service for billing, which initiates pulses, the number of which are proportional to

the quantity being measured, and which may include external protection devices. Pulse metering equipment shall be considered advanced metering equipment that shall be owned, installed, operated, and maintained by a transmission and distribution utility and such ownership, installation, operation and maintenance shall not be a competitive energy services.

(19) Purchased power market value - The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(20) Retail electric provider - A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(21) Retail stranded costs - Part of net stranded cost associated with the provision of retail service.

(22) Standard meter - The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(23) Stranded costs - The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(24) Stranded cost charges - Competition transition charges as defined in this section and transition charges established pursuant to PURA §39.302(7).

(25) System service - Service that is essential to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third party facility. System services include, but are not limited to, the following:

(A) the regulation and control of electricity in the transmission and distribution system;

(B) planning, design, construction, operation, maintenance, repair, retirement, or replacement of transmission and distribution facilities, equipment, and protective devices;

(C) transmission and distribution system voltage and power continuity;

(D) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner;

(E) commission-approved public education and safety communication activities specific to transmission and distribution that do not preferentially benefit the utility's affiliate(s);

(F) transmission and distribution utility standard metering and billing services as defined by this section;

(G) commission-approved administration of energy savings incentive programs in a market-neutral, nondiscriminatory manner, through standard offer programs or limited, targeted market transformation programs; and

(H) line safety, including tree trimming.

(26) Transmission - For purposes of §25.344(g)(2)(B) of this title, transmission relates to system and discretionary services associated with facilities at or above 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third party electric grid facilities, to the point of interconnection with distribution, retail customer or other third party facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering system services, and transmission and distribution utility customer services as defined by this section.

(27) Transmission and distribution utility - A person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6), in a qualifying power region certified under PURA §39.152, but does not include a municipally owned utility or an electric cooperative.

(28) Transmission and distribution utility billing system services - Services related to the production and remittance of a bill to a retail electric provider for the transmission and distribution charges applicable to the retail electric provider's customers as prescribed by PURA §39.107(d), and billing for wholesale transmission service to entities that qualify for such service. Transmission and distribution utility billing system services may include, but are not limited to, the following:

(A) generation of billing charges by application of rates to customer's meter readings, as applicable;

(B) presentation of charges to retail electric providers for the actual services provided and the rendering of bills;

(C) extension of credit to and collection of payments from retail electric providers;

(D) disbursement of funds collected;

(E) customer account data management;

(F) customer care and call center activities related to billing inquiries from retail electric providers;

(G) administrative activities necessary to maintain retail electric provider billing accounts;

(H) an operating billing system; and

(I) error investigation and resolution.

(29) Transmission and distribution utility customer service - For purposes of §25.344(g)(2)(G) of this title, transmission and distribution customer service relates to system and discretionary services associated with the utility's energy efficiency programs, demand-side management programs, public safety advertising, tariff administration, economic development programs, community support, advertising, customer education activities, and any other customer services.

(30) Transmission and distribution utility metering system services - Services that relate to the installation, maintenance, and

polling of an end-use customer's standard meter. Transmission and distribution utility metering system services may include, but are not limited to, the following:

(A) ownership of standard meter equipment and meter parts;

(B) storage of standard meters and meter parts not in service;

(C) measurement or estimation of the electricity consumed or demanded by a retail electric consumer during a specified period limited to the customer usage necessary for the rendering of a monthly electric bill;

(D) meter calibration and testing;

(E) meter reading, including non-interval, interval, and remote meter reading;

(F) individual customer outage detection and usage monitoring;

(G) theft detection and prevention;

(H) customer account maintenance;

(I) installation or removal of metering equipment;

(J) an operating metering system; and

(K) error investigation and re-reads.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) Purpose. The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.

(b) Application. This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002. This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period.

(c) Separation of transmission and distribution utility billing system service costs.

(1) Transmission and distribution billing system services shall include costs related to the billing services described in §25.341(28) of this title (relating to Definitions).

(2) Charges for transmission and distribution billing system services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).

(d) Separation of transmission and distribution utility billing system service activities.

(1) Transmission and distribution utility billing system services as described in §25.341(28) of this title shall be provided by the transmission and distribution utility.

(2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).

(3) Additional retail billing services pursuant to PURA §39.107(e) shall be provided on an unbundled discretionary basis pursuant to a commission- approved embedded cost-based tariff.

(4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) Uncollectibles and customer deposits.

(1) The retail electric provider is responsible for retail customer uncollectibles and deposits.

(2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the unregulated function, as prescribed by §25.344(g)(2)(I) of this title.

(f) Separation of transmission and distribution utility metering system service costs. Transmission and distribution utility metering system services shall include costs related to the metering services as defined in §25.341(30) of this title.

(g) Separation of transmission and distribution utility metering system service activities.

(1) Metering services before the introduction of customer choice.

(A) Affected utilities shall continue to provide metering services pursuant to commission rules and regulations provided that affected utilities do not engage in the provision of competitive energy services as defined by §25.341(6) of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

(B) Affected utilities may continue to use metering equipment installed, operated, and maintained by the affected utility prior to the effective date of this section, but may not use the information gained from its provision of the meter or metering services as defined in §25.341(6)(G) of this title except as permitted in §25.341(10) of this title.

(C) When requested by the end-use customer, an affected utility shall charge the end-use customer the incremental cost for the replacement of an end-use customer's meter with an advanced meter owned, operated, and maintained by the affected utility.

(2) Metering services on and after the introduction of customer choice until metering services become competitive. On the introduction of customer choice in a service area, metering services as described by §25.341(30) of this title for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice provided that the affected utility does not engage in the provision of competitive energy services as defined by §25.341(6) of this title and prescribed by §25.343 of this title.

(A) Standard meter.

(i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by PURA §39.107(a) and PURA §39.107(b).

(ii) The transmission and distribution utility shall bill a retail electric provider for non-bypassable charges based upon the measurements obtained from each end-use customer's standard meter.

(iii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter owned, operated, and maintained by the transmission and distribution utility.

(iv) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary

for the calculation of transmission and distribution charges in accordance with that end-use customer's transmission and distribution rate schedule.

(B) Meter reading. Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.

(C) End-use customer meters. Nothing in this section precludes the end- use customer or the retail electric provider from owning, installing, and maintaining metering equipment on the customer-premise side of the standard meter.

(D) Advanced metering services.

(i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title.

(ii) Affected utilities may continue to use metering equipment installed, operated, and maintained by the affected utility consistent with the effective date established under paragraph (1)(B) of this subsection, but may not use the information gained from its provision of the meter or metering services as defined in §25.341(6)(G) of this title, except as permitted in §25.341(10) of this title.

(iii) Without authorization from the retail electric provider, the transmission and distribution utility shall not use any advanced metering data except as prescribed by subparagraph (A)(iv) of this paragraph.

(iv) The installation of advanced metering equipment on the transmission and distribution utility's standard meter must be performed by transmission and distribution utility personnel or by contractors under the supervision of the utility.

(v) For services relating to clause (iv) of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non- discriminatory and made pursuant to a commission- approved embedded cost based tariff. Unless authorized by clause (ii) of this subparagraph or by the commission, the advanced metering equipment shall not be provided by the transmission and distribution utility.

(vi) Advanced metering equipment provided to the transmission and distribution utility for installation onto the standard meter shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).

(vii) All advanced metering services and related costs shall be borne by the retail electric provider, except for charges for pulse metering equipment, installation and removal which shall be borne by the entity executing the pulse metering equipment installation agreement.

(h) Competitive energy services.

(1) Nothing in this section is intended to affect the provision of competitive energy services, including those that require access to the customer's meter.

(2) An affected utility shall not provide any service that is deemed a competitive energy service under §25.341(6) of this title except as provided under §25.343(d)(1) of this title.

(i) Electronic data interchange.

(1) Standards. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission.

(2) Settlement. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission.

(3) Costs. Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the ERCOT-ISO fee.

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 October 2, 2001.

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Rhonda G. Dempsey
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Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

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

The Texas Department of Licensing and Regulation adopts new §§71.1, 71.10, 71.21, 71.22, 71.70, 71.80, and 71.90 concerning the regulation of certain warrantors of vehicle protection products. Sections 71.10, 71.22, and 71.70 are adopted with changes to the proposed text as published in the August 3, 2001 issue of the *Texas Register* (26 TexReg 5735). Sections 71.1, 71.21, 71.80, and 71.90 are adopted without changes as published in the August 3, 2001 issue of the *Texas Register* (26 TexReg 5735) and will not be republished.

Summary of Changes to Proposed Rules:

Proposed rule 71.10 has been changed to add definitions for "Applicant" and "Registrant". These definitions will help clarify the meanings of these terms. Additionally, the definitions in proposed rule 71.10 for "Financial statements", "Net worth", and "Nonpublic information" have been modified. The definition of "Financial statements" now requires the statements to be prepared by an independent certified public accountant. This will help enhance the reliability of the financial information presented in the statements. The definition of "Net worth" has been changed to mean the excess of total assets over total liabilities as reflected in audited financial statements. This will aid the Department in determining whether an applicant or registrant's net worth satisfies the Department's financial security requirements. The definition of "Nonpublic Information" has been expanded to include and exclude certain types of information. These changes

will provide clarification and guidance to registrants and consumers regarding the types of consumer information that may and may not be released publicly by warrantors of vehicle protection products.

Proposed rule 71.22(a) has been changed to add four additional methods for satisfying the financial security requirements of the registration process. All four methods require the applicant to demonstrate a net worth of at least $50 million as of the end of the most recent fiscal year. The first method allows an applicant to satisfy the financial security requirement based upon its net worth as reflected in its audited financial statements for its most recent fiscal year, together with an auditor's unqualified opinion on those statements. The second method allows the applicant to satisfy the financial security requirement based on the net worth of its parent corporation instead of its own, as evidenced by the parent corporation's audited financial statements for its most recent fiscal year and the auditor's unqualified opinion on those statements. The third method allows an applicant to satisfy the financial security requirement by filing an auditor's unqualified opinion on the applicant's audited financial statements for its most recent fiscal year, along with a certification by the same auditor that the applicant had a net worth of at least $50 million as of the end of the period audited. The fourth method allows an applicant to satisfy the financial security requirement by filing an auditor's unqualified opinion on the audited financial statements of the applicant's parent corporation for its most recent fiscal year, along with a certification by the same auditor that the applicant's parent corporation had a net worth of at least $50 million as of the end of the period audited.

Proposed rule 71.22 has been changed to add subsection 71.22(c), which provides that, upon the written request of the Executive Director or his designate, an applicant or registrant must provide financial statements and information to the executive director or his designate. This authority takes precedence over any of the other provisions of subsection 71.22(a). The Department believes that this change will enhance the Department's ability to determine whether an applicant or registrant meets the financial security requirements and will provide greater protection to the public.

Proposed rule 71.70(a) has been changed to delete the requirement that the required disclosure be placed on invoices of the registrant. Proposed rule 71.70(a) also has been changed to require registrants to provide the required disclosure to "consumers" of their vehicle protection products and warranties, and not just to "purchasers" of those products and warranties. The Department believes that both of these changes will clarify the notification duties of registrants and will provide greater protection to the public.

Proposed rule 71.70(d) has been changed to require registrants to provide a copy of the vehicle protection product warranty to a consumer within 10 days from the date of purchase, as opposed to 45 days as originally proposed. Proposed rule 71.70(d) also has been changed to substitute "vehicle protection product warranty" for "warranty", and to require registrants to provide a copy of the warranty to consumers and not just to purchasers. The Department believes that each of these changes will clarify the meaning of the rule and will provide greater protection to the public.

Proposed rule 71.70(e) has been changed to narrow the scope of the prohibition against disclosure of nonpublic information. The new text limits the prohibition to information obtained in connection with a sale occurring in the State of Texas. At the same time, the new text adds claims information to the types of nonpublic information that a registrant is prohibited from disclosing.

Proposed rule 71.70(f) has been changed to make it consistent with the change in definition of "Nonpublic information" in proposed rule 71.10(6).

Purpose of Adoption:

The proposed rules are to implement the provisions of Senate Bill 714, enacted by the 77th Texas Legislature. Senate Bill 714 establishes Article 9035 of the Texas Revised Civil Statutes Annotated (the Act), regarding regulation of warrantors of vehicle protection products. This will be a new program for the State of Texas, which has not regulated warrantors of vehicle protection products in the past.

The Act grants the Department authority to license and regulate warrantors of vehicle protection products. The Act took effect September 1, 2001.

Rulemaking Process:

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The Department held meetings by conference call and in person with representatives of the National Vehicle Protection Association (NVPA) on May 15, May 31, and June 27, 2001. The Department has received written comments for and against the proposed rules.

The Department wishes to thank all of the persons and organizations who participated in its rulemaking process and submitted comments on the proposed rules.

Summary of Comments Received on the Proposed Rules and the Department's Responses to Comments:

Comment on proposed rule 71.10: The Texas Automobile Dealers Association (hereinafter, TADA) suggested adding definitions of the terms "reimbursement insurance policy," "seller," "vehicle protection product," and "warrantor" to rule 71.10, even though these terms are already defined in the Act. TADA urged that placing the definitions in the rules would provide additional clarity to regulated entities.

Response to comment: Disagree.

The Department does not believe it appropriate to write a rule that simply duplicates law already stated in a statute. Duplication of a statutory provision in an administrative rule is inefficient and creates a potential for inconsistent provisions of law. It is not unreasonable to expect a regulated entity to read and become familiar with the Act as well as the Department's administrative rules.

Comment on proposed rule 71.10: NVPA suggested adding definitions of the terms "consumer," "person," and "warrantor" to the rules, even though these terms are already defined in the Act. NVPA urged that placing the definitions in the rules would help avoid confusion on the part of regulated entities.

Response to comment: Disagree.

The Department does not believe it appropriate to write a rule that simply duplicates law already stated in a statute. Duplication of a statutory provision in an administrative rule is inefficient and creates a potential for inconsistent provisions of law. It is not unreasonable to expect a regulated entity to read and become familiar with the Act as well as the Department's administrative rules.

Comment on proposed rule 71.10: NVPA suggested adding definitions of the terms "applicant" and "registrant." These terms are used in the proposed rules, but not defined in the Act or the rules.

Response to comment: Agree.

Comment on proposed rule 71.10: NVPA suggested modifying the definition of "financial statements" provided in the proposed rules, to include language stating that the documents must be prepared by an independent certified public accountant.

Response to comment: Agree.

Comment on proposed rule 71.10: NVPA suggested modifying the definition of "net worth" provided in the proposed rules, to include language stating that the net worth must be reflected in financial statements.

Response to comment: Agree.

Comment on proposed rule 71.10: NVPA suggested deleting the definition of "nonpublic information" provided in the proposed rules, and replacing it with a definition referencing information that is not otherwise publicly available from government agencies, including courts, or widely distributed media.

Response to comment: Disagree.

The Department does not believe that what may or may not be available from other government agencies or the media should define the meaning of nonpublic information for the purposes of the Act, as this would not be an objective standard, would not be ascertainable by regulated entities without substantial research, would fluctuate over time, would vary from one agency or media source to another, and would result in an improper delegation of the Department's authority to other entities. The Department has modified the definition of nonpublic information in the rules, however, to provide clarification and guidance to registrants on the types of consumer information that may and may not be disclosed to the public.

Comment on proposed rule 71.22: NVPA suggested modifying §71.22(a)(1) of the proposed rules to repeat the language found in §7(a)(1) of the Act, which describes a reimbursement insurance policy.

Response to comment: Disagree.

The Department does not believe it appropriate to write a rule that simply duplicates law already stated in a statute. Duplication of a statutory provision in an administrative rule is inefficient and creates a potential for inconsistent provisions of law. It is not unreasonable to expect a regulated entity to read and become familiar with the Act as well as the Department's administrative rules.

Comment on proposed rule 71.22: NVPA suggested deleting the proposed language in §71.22(a)(2) of the proposed rules, which would require presentation of an audit report and audited financial statements to demonstrate a net worth of at least $50 million. NVPA suggested replacing it with a provision allowing presentation of a written statement from a certified public accountant certifying the entity's net worth, without any requirement that an audit report or financial statements be provided, except when the Department has a reasonable concern as to the validity of the written statement. NVPA urged that this change would assuage the industry's concerns about their proprietary financial information being made public.

Response to comment: Disagree.

A written statement, as suggested by NVPA, would not be sufficient in all cases to establish net worth to the satisfaction of the Department. The purpose of proposed rule 71.22 is to describe alternative methods by which regulated entities may demonstrate financial security sufficient to honor warranty claims that may arise. Maintaining reimbursement insurance is one method of demonstrating financial security. Proving a net worth of $50 million is an alternative method. Consumer protection is the purpose which underlies the financial security requirement. The Department believes that this important purpose warrants the submission of more extensive evidence that will permit the Department to draw its own conclusions about a company's net worth.

The Department is sensitive, however, to NVPA's concern that an applicant or registrant's financial statements and information not be made public. The Department first would point out that the provisions of the Open Records Act set forth in Texas Government Code, §552.110 provide an exception to disclosure of financial information which protects the industry from having this information released by the Department to the public. Should such financial information be requested, the Government Code provides procedures for both the Department and the applicant or registrant to request an opinion from the Office of the Attorney General protecting the information from disclosure.

Additionally, the Department has changed proposed rule 71.22(a), as discussed above under "Summary of Changes to Proposed Rules", to provide alternative methods by which an applicant or registrant may satisfy the financial security requirements without having to file its financial statements with the Department. While the Executive Director and his designate still retain the authority to request and obtain financial statements and information from applicants and registrants, the Department intends this authority to be exercised only when the Executive Director or his designate determines that such information is warranted by particular circumstances.

Comment on proposed rule 71.70: NVPA suggested modifying §71.70(a) of the proposed rules, to require that Departmental information be included only in the warranty document.

Response to comment: Agree.

Comment on proposed rule 71.70: NVPA suggested modifying §71.70(e) of the proposed rules, by adding a reference to nonpublic information obtained in connection with claims made under a vehicle protection product warranty, in the description of information that registrants are prohibited from disclosing.

Response to comment: Agree.

Statutory Authority and Statutes Affected:

The proposed new rules, as modified, are adopted under Senate Bill 714, enacted by the 77th Texas Legislature in 2001, which establishes Article 9035 of the Texas Civil Statutes, and provides the Texas Department of Licensing and Regulation the authority to promulgate and enforce rules and to take action necessary to assure compliance with the intent and purpose of the Act.

The statutory provisions affected by the adopted new rules are those set forth in Texas Civil Statutes, Article 9035 and the Texas Occupations Code, Chapter 51.

§71.10. Definitions.

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

(1) Applicant--A person who submits to the department an application to be a warrantor of vehicle protection products.

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

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

(4) Financial statements--A balance sheet, income statement, statement of cash flows, and statement of equity reflecting the financial condition of the subject, prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(5) Net worth--The excess of total assets over total liabilities as reflected in audited financial statements.

(6) Nonpublic information--Information regarding an individual that is derived from the offering of vehicle protection products and vehicle protection product warranties, the sale of such products and warranties, and claims made under such warranties. The term does not include customer names, addresses, and telephone numbers, but does include customer financial and credit information as well as information concerning the price paid for a vehicle protection product or vehicle protection product warranty, the type of vehicle protection product purchased, the terms and conditions of any warranty, the expiration date of any warranty, the facts and circumstances involved in any claim made on a warranty, and the claim history of an individual. The term also includes information prohibited from disclosure by statute.

(7) Registrant--A person approved by the department to be a warrantor of vehicle protection products.

§71.22. Registration Requirements - Financial Security Requirements.

(a) Each applicant and registrant may comply with the financial security requirement under Article 9035 by submitting to the department the information required by one of the following four subsections:

(1) proof of a reimbursement insurance policy described in Article 9035;

(2) an audit report and audited financial statements for its most recent fiscal year which demonstrate that either the applicant or the registrant, or the parent corporation of the applicant or registrant, if there is one, had a net worth of at least $50 million as of the end of its most recent fiscal year;

(3) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the applicant or registrant as of the end of its most recent fiscal year, together with a certification from the same accountant who performed the audit that the applicant or registrant had a net worth in excess of $50 million as of the end of the period audited; or

(4) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the parent corporation of the applicant or registrant as of the end of the parent corporation's most recent fiscal year, together with a certification from the same accountant who performed the audit of the parent corporation that it had a net worth in excess of $50 million as of the end of the period audited.

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

(c) Notwithstanding the other provisions of this section, an applicant or registrant shall promptly provide all financial statements and information to the executive director or his designate that are requested in writing by the executive director or his designate.

§71.70. Responsibilities of Registrant.

(a) A registrant must provide the following written notification to all consumers of its vehicle protection product and warranties: "Regulated by the Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification shall be provided on all warranty contracts.

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

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

(d) A registrant shall provide a copy of the vehicle protection product warranty to the consumer within 10 days from the date of purchase.

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

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

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

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Texas Department of Licensing and Regulation
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 8. PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY

CHAPTER 245. GENERAL PROVISIONS

37 TAC §§245.11, 245.22, 245.47

The Private Sector Prison Industries Oversight Authority Board adopts amendments to §§245.11, 245.22, and 245.47 concerning the establishment of the Private Sector Prison Industries Expansion Account, eliminating the requirement for participating agencies or private industry partners from paying an equivalent amount to unemployment insurance taxes. Sections 245.11, 245.22, and 245.47 are adopted without changes to the proposed text as published in the July 13, 2001, issue of the *Texas Register* (26 TexReg 5225) and will not be republished. The Board has decided not to adopt the proposed change to §245.30 and the previous language will remain in force. The amendment to §245.30 is being withdrawn elsewhere in this issue of the *Texas Register*.

The amendments conform the Board rules with the changes in the law made by House Bill 1617, 77th Legislature, 2001.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §§497.051 - 497.062, which provides the Oversight Authority with the authority to promulgate rules; 18 United States Code 1761; 42 United States Code, §§4321 - 4347; and 40 Code of Federal Regulations Part 1500.

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 October 3, 2001.

TRD-200105983
Joe Thrash
Attorney
Private Sector Prison Industries Oversight Authority
Effective date: October 23, 2001
Proposal publication date: July 13, 2001
For further information, please call: (512) 406-5750

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 79. LEGAL SERVICES

SUBCHAPTER Q. FORMAL APPEALS

The Texas Department of Human Services (DHS) repeals §79.1606, concerning proposals for decision, final decisions, and final orders, and §79.1607, concerning motions for rehearing; adopts amendments to §79.1601, concerning definitions, §79.1603, concerning venue, §79.1605, concerning request for a hearing; and adopts new §79.1606, concerning notice of hearing, §79.1607, concerning administrative law judge, §79.1608, concerning other procedures, §79.1609, concerning proposals for decision, final decisions, and final orders, and §79.1610, concerning motions for rehearing, in its Legal Services chapter. The amendments and new sections are adopted without changes to the proposed text published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5610), and will not be republished.

Justification for the repealed and new sections is to organize and revise the formal hearing rules that are used in appeals of adverse actions taken by DHS, and in hearings conducted under the contested case provisions of the Administrative Procedures Act. This will eliminate confusion that has arisen with the inadvertent repeal of rules formerly in effect that have been determined to be still necessary in practice before the State Office of Administrative Hearings, and will clarify existing practice.

The department received no comments regarding adoption of the repeals, amendments and new sections.

40 TAC §§79.1601, 79.1603, 79.1605 - 79.1610

The amendments and new sections are proposed under the Human Resources Code, Title 2, Chapters 22, 32 and 33, and Health and Safety Code, Chapters 142, 242, 252, 247 and 253, which authorize DHS to administer assistance programs and regulate certain providers of services.

The amendments and new sections implement the Human Resources Code, Title 2, Chapters 22, 32 and 33, and Health and Safety Code, Chapters 142, 242, 252, 247 and 253.

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 October 5, 2001.

TRD-200106006
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 438-3734

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40 TAC §79.1606, §79.1607

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22, 32 and 33, and Health and Safety Code, Chapters 142, 242, 252, 247 and 253, which authorize the department to administer assistance programs and regulate certain providers of services.

The repeals implement the Human Resources Code, Title 2, Chapters 22, 32 and 33, and Health and Safety Code, Chapters 142, 242, 252, 247 and 253.

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 October 5, 2001.

TRD-200106005
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 438-3734

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PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 182. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

SUBCHAPTER A. DEFINITIONS

40 TAC §182.1

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.1 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5614). This amendment will eliminate the word devices from the name of the program.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106008
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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40 TAC §182.3

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.3 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5614). The amendment removes or modifies language that is more in line with the changes made to the program by H.B. 2345.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106009
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.4 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5615). The amendment removes or modifies language that is more in line with the changes made to the program by H.B. 2345.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106010
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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SUBCHAPTER B. PROGRAM ELIGIBILITY

40 TAC §182.20

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.20 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5616). The amendment removes or modifies language that is more in line with the changes made to the program by H.B. 2345.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106011
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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40 TAC §182.21

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.21 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5616). The amendment removes or modifies language that is more in line with the changes made to the program by H.B. 2345.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106012
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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40 TAC §182.25

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.25 without changes to the text as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5617). The amendment removes or modifies language that is more in line with the changes made to the program by H.B. 2345.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106013
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

SUBCHAPTER A. DEFINITIONS AND BOARD OPERATIONS

40 TAC §183.9

The Texas Commission for the Deaf and Hard of Hearing adopts amendment to §183.9 which defines interpreter, certified court interpreter and Communication Access Real-time Translation with changes as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5529-5714).

Comments were received on the proposal during the comment period from one individual. The comments were regarding format and clarification of questions regarding the published preamble of the document. The commenter was generally in favor of the rules, but expressed concerns, asked questions, and made recommendations. One change was made changing the word Transcription to Translation.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: Regarding the first paragraph of the preamble, clarification was requested as to the goal the agency wished to achieve and clarification on whether the agency wanted to have CART reporters working along with Sign Language interpreters and why were we not discussing spoken language interpreters.

Response: The purpose of the rule is to define "interpreter", "court interpreter" and "CART provider" since the agency is responsible for certifying interpreters and court interpreters for persons who are deaf or hard of hearing. The definition for CART provider is to clarify what is meant by the term since the agency is responsible to maintain a list of CART providers to be available upon request of the court. The CART provider is not in lieu of the court reporter but to be the communication access vehicle for the person who has a hearing loss and could not benefit from a sign language interpreter. The agency does not address spoken language interpreters because that is the responsibility of the Texas Department of Licensing and Regulation, as per statute. No action.

Comment: Regarding the second and third paragraphs of the preamble, a question was asked as about the effect on small business and what study was done to prove there was no impact on these small businesses?

Response: This rule is to define terms that are used in other rules. Defining the terms has no fiscal impact upon any business or agency.

Comment: Regarding §183.9 (2), a request was made to define "interpreter" in reference to "sign language interpreter" so that it is not confused with spoken language interpreter.

Response: The term is defined in §183.9 (16) Interpreter.

Comment: Regarding §183.9 (5), a comment was made regarding "interpreter" possibly meaning "spoken language interpreter" as opposed to "sign language interpreter". Also suggested some changes in which words should be capitalized.

Response: The agency certifies only sign language interpreters. Spoken language interpreters are licensed by the Texas Department of Licensing and Regulation. No changes were deemed necessary in the formatting.

Comment: Regarding §183.9 (11), question was asked if "CART reporter" could be confused with "court reporters" and recommended that the word "Transcription" in the definition should be changed "Translation".

Response: To become a CART reporter one must first be a court reporter. The word "transcription" has been corrected to say "translation".

Comment: Regarding §183.9 (16), comment made that there is not a distinction between spoken language and sign language interpreters. Also suggested some changes in which words should be capitalized.

Response: The agency certifies only sign language interpreters. Spoken language interpreters are licensed by the Texas Department of Licensing and Regulation. No changes were deemed necessary in the formatting.

Comment: Regarding §183.9 (20), (21), (23), a recommendation was made for changes in capitalization of words.

Response: No change was deemed necessary.

Comment: Regarding §183.9 (27), A question was asked about National Association of the Deaf (NAD) Certification and whether or not they were a certifying body.

Response: The NAD was for a time a national certifying body but have presently suspended testing and certifying. They are now working with the Registry of Interpreters for the Deaf (RID) to develop a new interpreter certification program. The NAD certification does not have reciprocity in this state.

Comment: Regarding §183.9 (35), question was asked about why the agency did not define the certifications offered through the National Court Reporters Association (NCRA) in regard to CART reporters.

Response: The definitions mentioned above are the responsibility of the Court Reporter Certification Board. No action taken on this item.

This rule is adopted under the Human Resources Code, 81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§183.9. Definitions.

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

(1) ASL--American Sign Language.

(2) BEI--Board for Evaluation of Interpreters. The certifying board for the evaluation of interpreters under the Texas Commission for the Deaf and Hard of Hearing.

(3) Board--The Board for Evaluation of Interpreters.

(4) Certification--The process of granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a certificate.

(5) Court Interpreter -- An individual who, on the basis of an interpreter skills evaluation, is determined to have a particular skill level, or who has met requirements or qualifications for a particular skill level and has been so certified to practice interpreting in courts in the State of Texas by the board and commission, or other professional interpreter certifying association.

(6) CDI--Certified Deaf Interpreter Certificate issued by RID indicating intermediary/relay interpreter skills.

(7) CI--Certificate of Interpretation issued by RID certifying the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign.

(8) CT--Certificate of Transliteration issued by RID certifying the ability to transliterate between signed English and spoken English in both sign-to-voice and voice-to-sign.

(9) CI/CT--Certification issued by RID certifying the comprehensive ability to manually and orally interpret and transliterate.

(10) CSC--Comprehensive Skills Certificate issued by RID certifying the ability to interpret and transliterate between ASL and Spoken English. This certificate is no longer issued but is still recognized.

(11) Communication Access Real-time Translation (CART)--the process of transcribing the spoken words of an oral proceeding to simultaneously project the words on a screen.

(12) Evaluation--The process by which the written and performance tests are administered to interpreter certification candidates to assess their knowledge and skill levels.

(13) IC--Interpretation Certificate issued by RID certifying the ability to interpret between ASL and spoken English. This certificate is no longer issued but is still recognized.

(14) Intermediary/relay interpreter--A certified interpreter who is deaf or hard of hearing who facilitates communication both linguistically and culturally between a deaf consumer and interpreter.

(15) Interpret/Interpretation--Process of conveying a message either from spoken language to ASL or from ASL to spoken language.

(16) Interpreter-- An individual who, on the basis of an interpreter skills evaluation, is determined to have a particular skill level, or who has met requirements or qualifications for a particular skill level and has been so certified to practice interpreting in the State of Texas by the board and commission, or other professional interpreter certifying association.

(17) MCSC--Master Comprehensive Skills Certificate issued by RID certifying that an interpreter/transliterator had a CSC for at least four years and met the standards of a higher level of competence. This certificate is no longer issued but is still recognized.

(18) MSS Certificate--Morphemic Sign System certificate issued by the commission certifying the ability to convey a message from spoken English into morphemic signs for English and from morphemic signs for English into spoken English.

(19) Oral certification--The oral certificate issued by the commission certifying proficiency in oral transliterating. This certificate is no longer issued but is still recognized.

(20) OC:B--Oral Certification:Basic. The spoken-to-visible and visible-to-spoken certificate issued by the commission.

(21) OC:C--Oral Certification:Comprehensive. The spoken-to-visible and visible-to-spoken certificate issued by the commission.

(22) OC:S/V--The oral certification: spoken to visible issued by RID.

(23) OC:V--Oral Certification:Visible. The visible-to-spoken certificate issued by the commission.

(24) OC:V/S--The oral certification:visible to spoken issued by RID.

(25) OIC:C--The oral certification:comprehensive issued by RID.

(26) Person who is deaf--A natural person who has a hearing impairment, regardless of whether the person also has a speech impairment that inhibits the person's comprehension of communication with others.

(27) RID--The Registry of Interpreters for the Deaf, a national certifying body.

(28) RSC--Reverse Skills Certificate issued by RID certifying the ability to convey a message from ASL or a manual code for English into appropriate or acceptable English either signed or spoken. This certificate is no longer issued but is still recognized.

(29) SC:L--Specialist Certificate:Legal issued by RID certifying that an interpreter/transliterator is qualified to interpret/transliterate in a variety of legal settings.

(30) TC--Transliteration Certificate issued by RID certifying the ability to convey a message from spoken English into manually coded English, and manually coded English into spoken English.

(31) Test and evaluation--The written test or performance test taken by candidates for interpreter certification.

(32) Transliterator-A natural person representing himself or herself as an interpreter who performs services for the public in the capacity of transliteration.

(33) Transliterate/Transliteration--The process of conveying a message from either spoken language into a manually coded language or from manually coded language into a spoken language.

(34) TSID--The Texas Society of Interpreters for the Deaf.

(35) Written test--An instrument to test the standards of ethical behavior. Both basic and comprehensive tests are administered.

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 October 5 2001.

TRD-200106014
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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SUBCHAPTER G. CERTIFIED COURT INTERPRETERS

40 TAC §183.702

The Texas Commission for the Deaf and Hard of Hearing adopts new rule §183.702 which outlines the requirements to grandfather individuals to be a certified court interpreter without changes as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5529-5714).

Comments were received from seven individuals on the proposal during the comment period. The commenters were generally in favor of the rule, but expressed concerns, asked questions, and made recommendations. No change was made to the rule.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: Regarding §183.702, a question was asked if there was any further definition of Levels III-i, IV-i, and V-i.

Response: These are types of certification are clarified in other rules of the agency.

Comment: Regarding §183.702, two commenters asked how will this new rule affect students, newly certified interpreters and persons who are not grandfathered?

Response: The rule does not affect newly certified interpreters or students. The rule is intended only for those who may meet the requirements outlined in statute which they can verify by documenting court interpreting experience occuring prior to September 1, 2001. Additional rules outlining court certification requirements will be proposed before January 1, 2002 for those not eligible for grandfathering.

Comment: Regarding §183.702, should a person just seek RID certifications if they wish to specialize? And, if yes, then what is suggested for the RID legal test since their specialized legal certification is no longer offered?

Response: The statute requires the agency to establish such guidelines and testing procedures for future interpreters wishing to have court interpreter certification. The RID legal skills test is one option.

Comment: Regarding §183.702, two commenters felt that the number of hours required for grandfathering were too low.

Response: The statute authorizing the agency to grandfather individuals who have experience interpreting in court prior to September 1, 2001 is clear. The number of hours is the proposed rule takes into consideration that the current pool of interpreters that may be available for court interpreting is not unreasonably restricted or depeleted. Any deficiencies of individual interpreters who are grandfathered will have to be addressed in future certification maintenance requirements. No action taken.

Comment: Regarding §183.702, is RID certification recognized for court interpreting?

Response: According to Article 38.31, Code of Criminal Procedure and Section 21.003, Civil Practice and Remedies Code, certain RID certifications are recognized for current court interpreting. The certifications that are listed as acceptable equivalents by the commission can be found in TAC 40, Part 6, Chapter 183, Subchapter B, §183.129 Certificate Comparisons. No action taken.

Comment: Regarding §183.702, do I need to apply for a court license now?

Response: The statute specified that in order to be gradfthered based on documented court interpreter experience you must apply before January 1, 2002. Otherwise, licensing opportunities will be offered through testing after January 1, 2002.

Comment: Regarding §183.702, concern was raised about providing documentation that may break confidentiality of the interpreting assignment.

Response: The documentation that an interpreter was involved in a court proceeding is public information and therefore does not violate confidentiality. The commission will not require documentation of the details of a court proceeding such as names of persons involved and the nature of the proceeding. The documentation of experience in the courtroom is the information the agency is seeking. No action taken.

Comment: Regarding §183.702,two comments were received on how a person could provide documentation of court experience?

Response: The statute gives the Executive Director authority to decide on the issue of documented court interpreting experience. There are several ways that a person may provide documentation of their experience in the courtroom. Documentation from a service agency that schedules services for the court; letters from a judge or judges; other court officers who schedule court interpreters; invoices reflecting court interpreting services; newspaper articles; or even letters from clients served could be an option for providing experience in the court. No action taken.

Comment: Regarding §183.702, are there any special forms for court interpreter grandfathering?

Response: Forms are in the process of being developed and will be available in the near future. Applications may also be obtained by contacting the commission.

Comment: Regarding §183.702, a comment was received that a $50 fee would be sufficient.

Response: No fees have been determined at this time. An additional rule will be proposed for fees. No action taken.

This rule is adopted under the Human Resources Code, 81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106015
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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40 TAC §183.703

The Texas Commission for the Deaf and Hard of Hearing adopts amendments to §183.703 which the information to be included on the list of CART providers without changes as published in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5529-5714).

Comments were received on the proposal during the comment period from one individual. The comments regarded format and asked for clarification of the preamble of the document. The commenter was generally in favor of the rules, but expressed concerns, asked questions, and made recommendations. No change was made to the rule.

The following comments were received regarding the proposed section.

Comment: Regarding §183.703, the commenter asked what input did National Court Reporters Association (NCRA) have in this amendment?

Response: No comment was received from NCRA. Therefore no action was needed.

Comment: Regarding §183.703, suggested that a section for definitions is needed. Suggested that an explanation of CART vocabulary and certification levels be provided.

Response: A definition of CART vocabulary and certification levles is outside the authority of the agency. No action will be taken on this response.

This rule is adopted under the Human Resources Code, 81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 October 5, 2001.

TRD-200106016
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: October 25, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 407-3250

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intention to review and readopt without change the following sections of 16 Texas Administrative Code, Part 1, Chapter 3: §3.7, relating to strata to be sealed off; §3.15, relating to surface casing to be left in place; §3.17, relating to pressure on the bradenhead; §3.18, relating to mud circulation required; §3.19, relating to density of mud-fluid; and §3.39, relating to proration and drilling units: contiguity of acreage and exceptions thereto. This review and consideration is being conducted in accordance with Texas Government Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*).

The agency's reasons for adopting these rules continue to exist.

Comments may be submitted to Leslie L. Savage, Oil and Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or leslie.savage@rrc.state.tx.us. Comments will be accepted for 30 days after publication of this notice in the *Texas Register*.

Issued in Austin, Texas, on October 2, 2001.

TRD-200105993
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: October 4, 2001

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The Railroad Commission of Texas (Commission) files this notice of intention to review 16 TAC Chapter 11, Subchapter A, relating to Rules of Practice and Procedure, and Subchapter E, relating to Quarry and Pit Safety. This review and consideration is being conducted in accordance with Tex. Gov't Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*).

The Commission is concurrently proposing amendments to §11.1, relating to Adoption by Reference.

As required by Tex. Gov't Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*), the Commission will accept comments regarding whether the reason for readopting the two subchapters continues to exist.

Comments on the notice of intention to review or the proposed amendments to §11.1 should be directed to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967 or via electronic mail at melvin.hodgkiss@rrc.state.tx.us and are due no later than 5:00 p.m. on the 30th day after publication in the *Texas Register*.

Issued in Austin, Texas, on October 2, 2001.

TRD-200105992
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: October 4, 2001

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Adopted Rule Review

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas ("Commission") adopts, pursuant to Tex. Gov't Code, §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*), the review of 16 TAC Chapter 13, Subchapters A through F, relating to the regulations for compressed natural gas. As part of this review process but in a separate proposal, the Commission adopts amendments to §§13.1 - 13.4, 13.22, 13.24, 13.25, 13.35, 13.36, 13.61, 13.69 - 13.71, 13.73, and 13.141. The proposal regarding the amendments and the proposed notice of review were published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6219 and 6375). The Commission received no comments on the proposed rule review.

The Commission has determined that the reasons for adopting the rules, with the adopted amendments, continue to exist.

Issued in Austin, Texas, on October 2, 2001.

TRD-200105994

Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: October 4, 2001

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §183.573

	Level I	Level II	Level III	Level IV	Level V	OC:B MSS SEE II	OC:C OC:V	Level I Level II-III Level IV-V Intermediary
(1) Written Test Fee	$35	N/A	$40	N/A	$40	$35	$40	$20
(2) Performance Test Fee	$80	N/A	$100	N/A	$110	$80	$100	$30
(3) Reciprocity Application Fee	$50	$50	$50	$50	N/A	N/A	N/A	N/A
(4) Annual Maintenance Fee	$50	$50	$50	$50	$50	$50	$50	$50
(5) Late Maintenance Fee	$100	$100	$100	$100	$100	$100	$100	$100
(6) Recertification Fee	$50	$50	$50	$50	$50	$50	$50	$50
(7) Re-issuance Fee	$20	$20	$20	$20	$20	$20	$20	$20
(8) Inactive Status Fee	$25	$25	$25	$25	$25	$25	$25	$25
(9) Analysis Fee	$50	$65	$65	$75	$75	$50	$65	$75
(10) Score Sheets Fee	$20	$20	$20	$20	$20	$20	$20	$20
(11) Court Interpreter Annual Maintenance Fee	NA	NA	$25	$25	$25	NA	$25	$25

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Board of Architectural Examiners

Request for Proposal - Contractor

The Texas Board of Architectural Examiners (TBAE) intends to engage a contractor to perform administrative functions associated with a financial assistance program called the Architect Registration Examination Financial Assistance Fund (AREFAF).

The contractor shall help distribute application forms and informational literature for the program, serve as a point of contact for persons with questions about the program, receive completed applications for financial assistance, screen applicants to determine whether they satisfy the criteria established by the agency, and submit to TBAE lists of all applicants who have satisfied the criteria. TBAE will then select recipients from the list and award funds.

The following provisions govern the financial assistance program: The program is called the Architect Registration Examination Financial Assistance Fund (AREFAF). The program is funded by a mandatory contribution from all Texas registered architects. A one-time maximum award of $500 will be awarded to each approved applicant. Each recipient must meet the following criteria: Recipient must be a Texas resident who has resided in Texas for at least twelve (12) months immediately preceding the date the recipient submitted his or her application for the AREFAF award; Recipient must be (1) a candidate for architectural registration in Texas who is in good standing and has been approved to take the Architect Registration Examination (ARE) or (2) an architect in good standing who completed the ARE after September 1, 1999; Recipient must demonstrate that the examination fee for the ARE would pose or has posed a financial hardship for him or her; and Recipient must have attained passing scores on sections of the ARE for which the combined fees total at least $500. TBAE may not award an AREFAF to any member of the Board, any employee of TBAE, any person who assists in the administration of the AREFAF, any member of the Texas Legislature, or any family member of any person described here. TBAE expects to award this contract by November 9, 2001, with the contract to begin on November 13, 2001 and the contract to be completed on or before May 15, 2002, unless TBAE determines that circumstances require an extension of time.

Closing Date: Written proposals must be received at the Texas Board of Architectural Examiners, P O Box 12337, Austin, TX 78711-2337, Attention: Trish Prehn, on or before 5:00 p.m. on October 26, 2001. Proposals may be hand delivered to the Texas Board of Architectural Examiners, Attention: Trish Prehn, 333 Guadalupe, Suite 2-350, Austin, TX 78701.

Selection Criteria: Contractor will be selected based on demonstrated competence, knowledge, and qualifications and on the proposed fee for the services.

Proposals submitted: Proposals submitted should generally describe the organization and provide information about its structure and personnel, including resumes of key personnel and the personnel who would be in charge of the administration of the TBAE financial assistance program (AREFAF program). Proposals should describe the organization's experience in administering scholarship or other financial assistance programs, including a list of other scholarship or financial assistance programs administered by the organization and description of the organization's duties in connection with those programs. Proposals should identify the earliest date the organization could begin administration duties for the AREFAF program. Proposals should provide a comprehensive list of all fees that would be associated with the administration of the AREFAF program.

TRD-200106031
Carolyn Lewis
Deputy Director
Texas Board of Architectural Examiners
Filed: October 5, 2001

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal

law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of September 28, 2001, through October 4, 2001. The public comment period for these projects will close at 5:00 p.m. on November 9, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Exxon Mobil Pipeline Company; Location: The project is located on Mitchell Bay between Alexander Island and Mitchell Point in Harris County, Texas. CCC Project No.: 01-0347-F1; Description of Proposed Action: The applicant proposes to abandon four sections of an existing pipeline. The reason for not removing these sections is to protect the existing shorelines and bay bottoms, and to protect the foundation integrity of the existing electrical transmission towers. Type of Application: U.S.A.C.E. permit application #22475 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Ballard Exploration Company; Location: The project is located in Sabine Lake. It is approximately 5 miles offshore southeast of Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur North, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415077; Northing: 3305544. CCC Project No.: 01-0358-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities at State Tract 24 Well No. 001. The proposed location will not require any dredging or wheel washing. No fill material will be needed for the activity. Type of Application: U.S.A.C.E. permit application #22481 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, northeast of the Houston Ship Channel in State Tract 126, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 311960; Northing: 3279580. CCC Project No.: 01-0359-F1; Description of Proposed Action: The applicant requests authorization to install Well No. 1A in Galveston Bay, State Tract 126. The project involves the construction of a well platform, a production platform, a flowline, and a shell pad. The shell pad will measure 240-feet-long by 100-feet-wide and will require the placement of approximately 2,667 cubic yards of material. Water depth at the project site is approximately 5 feet below mean sea level (MSL). An 8-inch flowline will be installed by trenching, jetting, or disking, depending on bottom conditions and will be placed at minimum of 3 feet below the bay bottom. No dredging is proposed for the project. Type of Application: U.S.A.C.E. permit application #22496 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, northeast of the Houston Ship Channel in State Tract 126, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 311797; Northing: 3279584. CCC Project No.: 01-0360-F1; Description of Proposed Action: The applicant requests authorization to install Well No. 1A in Galveston Bay, State Tract 126. The project involves the construction of a well platform, a production platform, a flowline, and a shell pad. The shell pad will measure 240-feet-long by 100-feet-wide and will require the placement of approximately 2,667 cubic yards of material. Water depth at the project site is approximately 5 feet below mean sea level (MSL). An 8-inch flowline will be installed by trenching, jetting, or disking, depending on bottom conditions, and will be placed at minimum of 3 feet below the bay bottom. No dredging is proposed for the project. Type of Application: U.S.A.C.E. permit application #22497 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200106113
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: October 10, 2001

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Comptroller of Public Accounts

Amended Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP No. 129b) for the purpose of selecting a financial institution to act as a plan manager in connection with the administration of a higher education Section 529 savings plan authorized under Senate Bill 555. The plan manager will manage the investment of funds in a program for savings trust agreements from which distributions will be made for qualified higher education expenses at eligible educational institutions as provided in Section 529, Internal Revenue Code of 1986, as amended, and will market the higher education savings plan as directed by the Board. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent will be expected to begin performance of the contract on or about February 1, 2002, and should begin opening and managing accounts on or about May 15, 2002. The original Notice of Request for Proposals (RFP) was published in the *Texas Register* on September 28, 2001 (26 TexReg 7618). The first Amended Notice of Request for Proposals (RFP) was published in the *Texas Register* on October 5, 2001 (26 TexReg 7917).

Schedule Changes: Any changes to this October 5 issue date or other dates in the anticipated schedule of events shall be posted on the Texas Marketplace followed by an amended notice to be published in the next available issue of the *Texas Register*.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th St., Room G-24, Austin, Texas 78774,

(512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, October 5, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, October 5, 2001, 2:00 p.m. CZT. The Texas Marketplace website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, October 22, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, October 26, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Monday, November 19, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award.

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows:

Issuance of RFP--October 5, 2001, 2:00 p.m. CZT;

Non-Mandatory Letter of Intent to propose and Questions Due--October 22, 2001, 2:00 p.m. CZT;

Official Responses to Questions posted--October 26, 2001;

Proposals Due--November 19, 2001, 2:00 p.m. CZT;

Contract Execution--February 1, 2002, or as soon thereafter as practical;

Commencement of Project Activities--February 1, 2002.

TRD-200106103
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 10, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of October 15, 2001 - October 21, 2001 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of October 15, 2001 - October 21, 2001 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-200106101
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 10, 2001

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Texas Department of Criminal Justice

Notice to Bidders - Correction

The Texas Department of Criminal Justice invites bids for the construction of enlarging the Outside Visitation Area at the Hutchins State Jail Facility, 1100 East Langdon Road, located in Dallas, Texas. The project consists of the new construction of a slab and enclosing this area with a CMU wall, complete with reinforcing pilasters. Both areas to be covered with a clear span, 14' eave height pre-engineered metal building roof. The size of the facility is approximately 2144 beds. The work includes disciplines as further shown in the Contract Documents prepared by : Tom Stafford, TDCJ Architect and Edwards & Kelcey, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience in the installation of the specified roofing and concrete work and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the TDCJ Contracts and Procurement Department at a cost of $ 50.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Texas Department of Criminal Justice: Texas Department of Criminal Justice, Contracts and Procurement Department, Two Financial Plaza, Ste 525, Huntsville, Texas 77340, Contact: Terri Bennett, Phone: (936) 437-7111, Fax: (936) 437-7009.

A Pre-Bid conference will be held at 11AM on October 23, 2001, at the Hutchins State Jail, 1100 East Langdon Road, Dallas, Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.

Bids will be publicly opened and read at 2PM on November 13, 2001, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects. 696-FD-2-B008 4 Hutchins State Jail, Dallas, Texas Construct Additional Visitation Area 696-FD-2-B008 Hutchins State Jail, Dallas, Texas Construct Additional Visitation Area

TRD-200106075
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: October 9, 2001

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Notice to Bidders - Correction

The Texas Department of Criminal Justice invites bids for the replacement of underground wiring at the Lindsey State Jail, Jacksboro, Texas. The project consists of the installation of a duckbank around the perimeter of the sites serving all of the buildings, security camera replacement, complete replacement of all electrical conduit and conductors on every building. Included is a complete replacement of security systems and the fire alarm system in conduit. All perimeter fire alarm and security systems will be fiber optic cable installed in the ductbank, at the Lindsey State Jail, 1137 Old Post Oak Road, Jacksboro, Texas 76458. The work includes, but is not limited to, trenching, electrical, security electronics, and fiber optics installation, as further shown in the Contract Documents prepared by: Freese and Nichols, Inc. 4055 International Plaza, Suite 200, Fort Worth, Texas 76109.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $150.00 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Robert J. Kinkel, Freese and Nichols, Inc., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109-4895, Phone: (817) 735-7413, Fax: (817) 735-7491.

A Pre-Bid conference will be held at 11:00 AM on October 2, 2001, at the LINDSEY STATE JAIL, JACKSBORO, TEXAS, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.

Bids will be publicly opened and read at 2:00 PM on November 1, 2001, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200106094
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: October 10, 2001

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Texas Education Agency

Notice of Public Hearing

The Texas Education Agency will hold a public hearing to solicit testimony and input from the public on proposed amendments to 19 TAC Chapter 176, Driver Training Schools, Subchapter BB, Commissioner's Rules on Minimum Standards of Operation of Texas Driving Safety Schools and Course Providers. The proposed amendments to 19 TAC Chapter 176, Subchapter BB, may be viewed on the agency's website at www.tea.state.tx.us/rules/home/coeprop.html.

The hearing will be held on Monday, October 29, 2001, from 9:00 a.m. to 1:00 p.m., unless testimony concludes prior to that time, in Room 1-111 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Individuals who wish to testify at the hearing should sign in at the hearing site; however, no prior registration is necessary. Speakers are encouraged, but not required, to provide written copies of their testimony. Five copies are sufficient. Depending on the number of individuals who sign up to testify, testimony may be limited to five minutes per speaker.

Individuals needing translation services or other special accommodations should notify the Division of Driver Training at (512) 997-6500 by 5:00 p.m. on Wednesday, October 24, 2001.

Individuals who are unable to attend the hearing may send written comments to: Proposed Commissioner's Rules on Driving Safety and Course Providers, c/o Driver Training Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Individuals may contact Kathy Kenerson at (512) 997-6507 for additional information.

TRD-200106110
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: October 10, 2001

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Notice of Public Hearing

The Texas Education Agency will hold a public hearing to solicit testimony and input from the public on proposed amendments to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules on Special Education Services, specifically §89.1151, Due Process Hearings, and §89.1185, Hearings. The proposed amendments to 19 TAC Chapter 89, Subchapter AA, may be

viewed on the agency's website at www.tea.state.tx.us/rules/home/coeprop.html.

The hearing will be held on Monday, October 29, 2001, from 2:00 p.m. to 7:00 p.m. at the Hilton Austin North & Tower Hotel, 6000 Middle Fiskville Road, Austin, Texas 78751.

Individuals who wish to testify at the hearing should sign in at the hearing site; however, no prior registration is necessary. Speakers are encouraged, but not required, to provide written copies of their testimony. Testimony will be limited to three minutes per speaker.

Interpreters for the deaf and Spanish translators will be available. Individuals requiring additional special assistance should call the Division of Special Education at (512) 463-9414. Individuals needing directions to the hearing location should call the hotel at (512) 206-3020.

Individuals who are unable to attend the hearing may send written comments to: Proposed Commissioner's Rules on Special Education, c/o Division of Special Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494 or submit their written comments over the Internet at http://www.tea.state.tx.us/rules/home/coeprop.html. Deadline for submission of public comments is November 18, 2001.

Individuals may contact the Division of Special Education at (512) 463-9414 for additional information.

TRD-200106111

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: October 10, 2001

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Edwards Aquifer Authority

Notice of Proposed Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permit, and Applications to Transfer and Amend Initial Regular Permits, and Technical Summary in Support Thereof

THE EDWARDS AQUIFER AUTHORITY HEREBY GIVES NOTICE OF the issuance of Proposed Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permits, and Applications to Transfer and Amend Initial Regular Permits ("Transfer Application"). This Transfer Application applies to transfer interim authorization status and amend Applications for Initial Regular Permit ("IRP Applications") and transfer and amend Initial Regular Permits ("IRPs") where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek. The Transfer Applications, if approved, would authorize the transferees to withdraw groundwater from the Edwards Aquifer at a new point of withdrawal east of Cibolo Creek according to the terms and conditions set forth in the amended IRP Applications and IRPs. The conditions contained in the amended IRP Applications and IRPs concern the location of points of withdrawal, among other things.

A copy of the Proposed Approval, along with the Technical Summary, are available for public inspection at the offices of the Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215, Monday through Friday between the hours of 7:30 a.m. and 4:30 p.m.

A brief description of the Proposed Approval of the Transfer Applications, and Technical Summary are set out on the attached table of Proposed Approvals of Transfer Applications.

Authority Technical Summary for Transfer Applications Table:

Docket Number	Transferor	Status	Purpose of Use	Place of Use/Point of Withdrawal	Transferee	Purpose of Use	Place of Use/Point of Withdrawal	Amount of Transfer (Acre-Feet)	E.A.A. Proposal
BE00109	San Antonio Water System	IRP	Irrigation	Bexar	City of Garden Ridge	Municipal	Comal	2.000	G
ME00345L1	San Antonio River Authority as Administrator for the Water Resource Development Group	IRP	Municipal	Medina	City of Garden Ridge	Municipal	Comal	43.000	G
ME00417	San Antonio Water System	IRP	Irrigation	Medina	City of Garden Ridge	Municipal	Comal	4.000	G
ME00479	San Antonio Water System	AIRP	Irrigation	Medina	City of Garden Ridge	Municipal	Comal	4.000	G
ME00493A	Edwardswater.com	AIRP	Irrigation	Medina	Lomas Construction, Inc.	Irrigation	Comal	3.000	G
ME00534	Tom Ducos & Phyllis Ducos	AIRP	Irrigation	Medina	Kyle Jividen	Industrial	Comal	1.000	G
ME00535L5	City of Schertz	AIRP	Irrigation	Medina	City of Marion	Municipal	Guadalupe	75.000	G
UV00437	San Antonio Water System	IRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	2.000	G
UV00461	San Antonio Water System	IRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	4.000	G
UV00478	San Antonio Water System	IRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	2.000	G
UV00479	San Antonio Water System	IRP	Municipal	Bexar	San Antonio Metropolitan Youth Soccer Institute	Municipal	Guadalupe	40.000	G
UV00537	San Antonio Water System	IRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	2.000	G
UV00576	San Antonio Water System	IRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	14.000	G
UV00630	San Antonio Water System	AIRP	Irrigation	Uvalde	City of Garden Ridge	Municipal	Comal	2.000	G

Explanation: G = Grant
IRP = Initial Regular Permit
AIRP = Application for Initial Regular Permit

The Proposed Action of the Transfer Applications will be presented to the board of directors for action within 60 days of the date of the last publication of the Notices required to be published pursuant to § 707.510(b)(2) and (3) (relating to Publication of Notice of Proposed Permits and Technical Summary in the *Texas Register* and Local Newspapers) of the Authority's rules, unless a Request for a Contested Case Hearing is submitted within 30 days after publication of this Notice in the *Texas Register* pursuant to §§ 707.510(d)(6) and 707.601-707.604 (relating to Procedures for Contested Case Hearings on Applications).

An applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a hearing on a Transfer Application by filing with the Docket Clerk of the Authority on or before the 30th day after the publication of this Notice in the *Texas Register* in accordance with §§ 707.510(d)(6) and §§ 707.601-707.604 Specifically, the deadline for filing a Request for a Contested Case Hearing is on or before Monday, November 19, 2001, at 4:30 p.m. at the Authority's Offices.

A request for a Contested Case Hearing Packet and instructions for filing a Request for a Contested Case Hearing may be obtained by contacting the Docket Clerk of the Authority, Ms. Brenda J. Davis.

This Notice of Proposed Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permits, and Applications to Transfer and Amend Initial Regular Permits and Technical Summary in Support Thereof is published pursuant to § 707.510(b), and will be published in the *Texas Register* and in the following six newspapers with circulation within the jurisdiction of the Authority: Hondo Anvil Herald; Medina Valley Times; New Braunfels Herald Zeitung; San Antonio Express-News; San Marcos Daily Record; and the Uvalde Leader-News.

If you have questions on any information in this notice or in the event you require additional information hearing procedures, you may contact Ms. Brenda J. Davis, Docket Clerk for the Authority, at (210) 222-2204 or 1-800-292-1047.

TRD-200106112
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Filed: October 10, 2001

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Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Laney Chiropractic and Rehabilitation Center, Keller, R18126; Nance Chiropractic, El Paso, R17939; Apogee Health and Chiropractic, Lewisville, R25347; Med-Fit Medical Partners, P.A., Arlington, R25258; Orthopedic and Neuromuscular Rehabilitation Associates, P.A., Houston, R24727; Saint Mary's Clinic L.P., Eagle Pass, R23862; Houston Polyclinic, Houston, R23771; Loving Denson Clinic, Houston, R08168; Odessa Foot Center, Odessa, R20936; Foot Specialists At First Colony, Sugar Land, R17361; Roy A. Bloom, D.D.S., P.C., Katy, R22652; Bay City Dental Clinic, P.C., Bay City, R23863; Woodhaven Pet Clinic, P.C., Fort Worth, R18639; Sonat Exploration, Houston, R24458.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200106068
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 9, 2001

♦ ♦ ♦

Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Lipitek, Incorporated, San Antonio, L04547; D.J. Contractors, Incorporated, El Paso, L04635; Quality Inspection Concepts, Houston, G02054.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200106069
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 9, 2001

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts new per diem payment rates for the nursing facilities program operated by the Texas Department of Human Services (DHS). These payments are adopted pursuant to House Bill (HB) Number 1, 77th Legislature, Article II §44 which states that $20 million in general revenue for each year of the biennium may "only be expended to improve the quality of care in nursing homes"; and Senate Bill 1839, 77th Legislature, which

directs HHSC to ensure that rate determination rules "improve the quality of care" by "providing incentives for increased direct care staff and direct care wages and benefits" and through other means to the extent funding allows. These payments are also adopted pursuant to HB 154, 77th Legislature, which directs HHSC to ensure that the "rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission." To comply with HB 154, the portion of the general and administrative rate component derived from reported liability insurance costs has been excluded from the rates in the chart below. The liability insurance rate component is $1.17 per diem. The funds from the liability insurance rate component excluded from these rates will be distributed to facilities that verify liability insurance coverage acceptable to HHSC.

Payment rates are adopted to be effective September 1, 2001, for the state fiscal years 2002 and 2003, as follows:

Figure 1:

Rates by TILE (Texas Index for Level of Effort) class:

TILE	Facilities Participating in the Enhanced Direct Care Staff Rate	Facilities not Participating in the Enhanced Direct Care Staff Rate
201	$148.64	$145.00
202	$132.71	$129.59
203	$125.62	$122.72
204	$105.17	$102.94
205	$97.74	$95.74
206	$98.83	$96.79
207	$89.85	$88.11
208	$86.83	$85.19
209	$81.06	$79.61
210	$70.74	$69.62
211	$68.22	$67.18
212 (default)	$68.22	$67.18
Supplemental Payments:		
Ventilator - Continuous	$79.98	$77.40
Ventilator - Less than Continuous	$31.99	$30.96
Pediatric Tracheostomy	$47.99	$46.44

Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 and (relating to Enhanced Direct Care Staff Rate), §355.308, and in accordance with proposed revisions to be codified in these sections.

Participating facilities requesting to staff above the minimum staffing requirements included in the rates in the above chart may receive one of the following payment rates per day in addition to the above payment rates (within available funds):

Figure 2:

Minutes Associated with Adopted Rate	Adopted Rate Per Diem
1 LVN Minute = 1.88 Aide Minutes = 0.68 RN Minutes	$0.30
2 LVN Minutes = 3.75 Aide Minutes = 1.36 RN Minutes	$0.60
3 LVN Minutes = 5.63 Aide Minutes = 2.05 RN Minutes	$0.90
4 LVN Minutes = 7.50 Aide Minutes = 2.73 RN Minutes	$1.20
5 LVN Minutes = 9.38 Aide Minutes = 3.41 RN Minutes	$1.50
6 LVN Minutes = 11.25 Aide Minutes = 4.09 RN Minutes	$1.80
7 LVN Minutes = 13.13 Aide Minutes = 4.77 RN Minutes	$2.10
8 LVN Minutes = 15.00 Aide Minutes = 5.45 RN Minutes	$2.40
9 LVN Minutes = 16.88 Aide Minutes = 6.14 RN Minutes	$2.70
10 LVN Minutes = 18.75 Aide Minutes = 6.82 RN Minutes	$3.00
11 LVN Minutes = 20.63 Aide Minutes = 7.50 RN Minutes	$3.30
12 LVN Minutes = 22.50 Aide Minutes = 8.18 RN Minutes	$3.60
13 LVN Minutes = 24.38 Aide Minutes = 8.86 RN Minutes	$3.90
14 LVN Minutes = 26.25 Aide Minutes = 9.55 RN Minutes	$4.20
15 LVN Minutes = 28.13 Aide Minutes = 10.23 RN Minutes	$4.50

Additional levels will be made available on an as needed basis within appropriated funds.

Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Enhanced Direct Care Staff Rate), §355.308, and in accordance with proposed revisions to be codified in this section.

TRD-200106092
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: October 9, 2001

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Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed payment rates for Consolidated Waiver program operated by the Texas Department of Human Services. These payment rates are proposed to be effective September 1, 2001. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on October 24, 2001, at 9:30 a.m. in Room 450C, of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (fourth floor, west tower). Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola, HHSC Rate Analysis MC W-425, 701 West 51st Street, Austin, Texas 78751- 2312. The receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas will accept hand-delivered written comments addressed to Mr. Arreola. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have

mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Mr. Arreola, HHSC Rate Analysis, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by October 22, 2001, so that appropriate arrangements can be made.

TRD-200106091
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: October 9, 2001

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Rustling Leaves Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Henington Alief Regional Branch Library, 7979 South Kirkwood, Houston, Texas 77072 at 6:00 p.m. on November 2, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $10,250,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Houston Rustling Leaves Apartments, L.P., (or a related person or affiliate thereof) (the "Borrower") a limited partnership, to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 280 unit multifamily residential rental development to be constructed on approximately 13 acres of land located on the southwest corner of the intersection of Rustling Leaves Road and Beechnut Road, Houston, Harris County, Texas 77083. The Project will be initially owned and operated by Houston Rustling Leaves Apartments (or a related person or affiliate thereof).

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200106106
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 10, 2001

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Hillside Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the City of Dallas Public Library, Dallas West meeting room, 1515 Young Street, Dallas, Texas 75201 at 6:00 p.m. on November 6, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $12,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to TX Hillside Apartments, L.P., (or a related person or affiliate thereof) (the "Borrower") a limited partnership, to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 236-unit multifamily residential rental development to be constructed on approximately 11 acres of land located on the north side of the 6100 block of Ledbetter Drive in between the intersections of Stoneport Drive and Pemberton Hill Road, Dallas, Dallas County, Texas 75216. The Project will be initially owned and operated by TX Hillside Apartments, L.P. (or a related person or affiliate thereof).

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200106107
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 10, 2001

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Oak Hollow Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the City of Dallas Public Library, Dallas West meeting room, 1515 Young Street, Dallas, Texas 75201 at 7:00 p.m. on November 6, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed

$12,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Oak Hollow Housing, L.P., (or a related person or affiliate thereof) (the "Borrower") a limited partnership, to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 150-unit multifamily residential rental development to be constructed on approximately 6 acres of land located on the north side of the 2900 block of East Ledbetter approximately 240 feet west of Bonnie View Road, Dallas, Dallas County, Texas 75216. The Project will be initially owned and operated by Oak Hollow Housing, L.P. (or a related person or affiliate thereof).

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200106108
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 10, 2001

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Texas Department of Insurance

Insurer Services

Application for incorporation to the State of Texas by FIRST AMERICAN LLOYDS, a domestic Lloyds company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200106109
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 10, 2001

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Boston Old Colony 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 the following flex percent of +73% by territory, for all classes and coverages. This overall rate change is +35.6%.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

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 November 5, 2001.

TRD-200106071
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 9, 2001

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Fidelity and Casualty Company of New York 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 the following flex percent of +73% by territory, for all classes and coverages. This overall rate change is +33.1%.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

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 November 5, 2001.

TRD-200106072
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 9, 2001

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Notice of Application by Small Employer Carrier to change to Risk-Assuming Carrier for Good Cause

Notice is given to the public of the application of the listed small employer carrier to be risk-assuming carrier under Texas Insurance Code Articles 26.51 and 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System or is approved for good cause to change its status to risk-assuming. The following small employer carrier has applied to change its status to a risk-assuming carrier for good cause:

Southwest Texas HMO, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division- Jimmy G. Atkins, 333 Guadalupe, Hobby Tower 1, 9th Floor, Austin, Texas.

If you wish to comment on this application to be risk-assuming carriers, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to change status to a risk-assuming carrier.

TRD-200106074
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 9, 2001

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Davis Vision, Inc., a foreign third party administrator. The home office is Plainview, New York.

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-200106073
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 9, 2001

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Texas Lottery Commission

Instant Game No. 249 "Bonus 7s"

1.0 Name and Style of Game.

A. The name of Instant Game No. 249 is "BONUS 7S". The play styles are "key number match and tic-tac-toe".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 249 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 249.

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, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $1,000, and $21,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 249 - 1.2D

Figure 1: GAME NO. 249 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	WIN
7	DBL
8	EGT
9	NIN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$21,000	21 THOU

Table 2 of this section Figure 2:16 TAC GAME NO. 249 - 1.2E

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. 249 - 1.2E

CODE	PRIZE
$2.00	TWO
$5.00	FIV
$8.00	EGT
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $8.00, $10.00, and $20.00.

H. Mid-Tier Prize - A prize of $50.00 and $200.

I. High-Tier Prize - A prize of $1,000 and $21,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (249), 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: 249-0000001-000.

L. Pack - A pack of "BONUS 7S" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 000 and 001 will be on the top page. Tickets 002 and 003 will be on the next page and so on. Tickets 248 and 249 will be on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS 7S" Instant Game No. 249 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 "BONUS 7S" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, If the player matches any of the YOUR NUMBERS to the LUCKY NUMBER, the player will win the prize shown for that number. If the player gets a "7" symbol, the player will win that prize automatically. In Game 2, if the player gets three (3) like numbers in any one row, column, or diagonal, the player will win the prize shown in the PRIZE BOX. If the player gets three (3) "7" symbols in any one row, column, or diagonal, the player will win double the prize shown in the PRIZE BOX. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) 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 prize symbols on a ticket.

C. No duplicate non-winning Your Numbers in Game 1.".

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS 7S" Instant Game prize of $2.00, $5.00, $8.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS 7S" Instant Game prize of $1,000 or $21,000, 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 "BONUS 7S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS 7S" 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 "BONUS 7S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,223,750 tickets in the Instant Game No. 249. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 249- 4.0

Figure 3: GAME NO. 249 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	1,466,936	8.33
$5.00	635,635	19.23
$8.00	220,006	55.56
$10.00	97,799	124.99
$20.00	73,338	166.68
$50.00	63,665	192.00
$200	9,914	1,232.98
$1,000	304	40,209.70
$21,000	4	3,055,937.50

*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 No. 249 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. 249, 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-200105996
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 4, 2001

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Instant Game No. 251 "Cash Across Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 251 is "CASH ACROSS TEXAS". The play style is a "key number match", "key number match with auto win", "match 3 of 5 with doubler", and "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 251 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 251.

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, 20, 25, 30, 35, 40, 45, 50, 55, $5.00, $10.00, $20.00, $50.00, $100, $500, $5,000, $50,000, SORRY SYMBOL, TIRE SYMBOL, MAP SYMBOL, STAR SYMBOL, GAS SYMBOL, LIGHTS SYMBOL, HAT SYMBOL, MONEY BAG SYMBOL, and DOUBLE DOLLAR SIGN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 251 - 1.2D

Figure 1: GAME NO. 251 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELVN
12	TWLV
13	THRTN
14	FRTN
15	FIFTN
20	TWENTY
25	TWYFIV
30	THIRTY
35	TRYFIV
40	FORTY
45	FRYFIV
50	FIFTY
55	FTYFIV
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIVE HUN
$5,000	FIV THOU
$50,000	50 THOU
TIRE SYMBOL	TIRE
SORRY SYMBOL	TRY AGAIN
MAP SYMBOL	MAP
DOUBLE DOLLAR SYMBOL	DOUBLE
STAR SYMBOL	STAR
GAS SYMBOL	GAS
LIGHTS SYMBOL	LIGHTS
HAT SYMBOL	HAT
MONEY BAG SYMBOL	MNYBG

Table 2 of this section Figure 2:16 TAC GAME NO. 251 - 1.2E

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. 251 - 1.2E

CODE	PRIZE
$5.00	FIV
$10.00	TEN
$15.00	FTN
$20.00	TWN

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 $5.00, $10.00, $15.00, and $20.00.

H. Mid-Tier Prize - A prize of $50.00, $70.00, $100, and $500.

I. High-Tier Prize - A prize of $5,000 and $50,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (251), 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: 251-0000001-000.

L. Pack - A pack of "CASH ACROSS TEXAS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be on the top page. The back of ticket 074 will be revealed on the back of the pack. Every other book will reverse.

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 ACROSS TEXAS" Instant Game No. 251 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 ACROSS TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) play symbols. On the billboard, if the player's YOUR SPEED is the same as the SPEED LIMIT within a game, the player will win the prize shown for that game. In the smoke, if the player finds a prize amount, the player will win that amount. On the truck, if the player matches any of the player's YOUR NUMBERS to the LUCKY NUMBER, the player will win the prize shown. If the player gets a TIRE symbol, the player will win that prize instantly. On the longhorn, if the player gets 3 like prize amounts, the player will win that amount. If the player gets 2 like prize amounts plus a DOUBLE DOLLAR symbol, the player will win DOUBLE that amount. On the gas pump, if the player gets 3 identical symbols on the same line across, the player will win the prize shown in the prize legend. 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 33 (thirty-three) 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 33 (thirty-three) 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 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to 3 times in Play Area 1: "Your Speed/Speed Limit".

C. No duplicate non-winning prize symbols will appear in Play Area 1: "Your Speed/Speed Limit".

D. Non-winning prize symbols in Play Area 1: "Your Speed/Speed Limit" will not match a winning prize symbol on the ticket .

E. Players can win up to 4 times in Play Area 2: "Key Number Match".

F. No duplicate non-winning prize symbols will appear in Play Area 2: "Key Number Match".

G. No duplicate non-winning YOUR NUMBERS will appear in Play Area 2: "Key Number Match".

H. Non-winning prize symbols on Play Area 2: "Key Number Match" will not match a winning prize symbol on the ticket.

I. The auto win symbol in Play Area 2: "Key Number Match" will never appear more than once on the ticket.

J. The auto win symbol in Play Area 2: "Key Number Match" will only appear on winning tickets.

K. The auto win symbol in Play Area 2: "Key Number Match" will never appear as the Lucky Number.

L. Players can win only once in Play Area 3: "Instant Win Area".

M. Winning tickets in Play Area 3: "Instant Win Area" will reveal a prize amount.

N. Non-winning tickets will display the non-winning message in Play Area 3: "Instant Win Area".

O. Players can win only once in Play Area 4: "Match 3 of 5".

P. No ticket will have four (4) or more like Play symbols on a ticket.

Q. In Play Area 4: "Match 3 of 5", the Doubler symbol will never appear on a ticket which contains three (3) like Play Symbols.

R. No more than one (1) Doubler Symbol will appear in Play Area 4: "Match 3 of 5".

S. No more than one (1) pair of like play symbols will appear on a ticket containing a Doubler Symbol in Play Area 4: "Match 3 of 5".

T. Players can win up to three (3) times on Play Area 5: "Match 3 with legend".

U. No duplicate non-winning games will appear in Play Area 5: "Match 3 with legend".

V. There will never be three (3) identical symbols in a vertical or diagonal line on Play Area 5: "Match 3 with legend".

W. In Play Area 5: "Match 3 with Legend", non-winning tickets will never contain more than two(2) of the same Play Symbols over the entire game play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH ACROSS TEXAS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $70.00, $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, $70.00, $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 ACROSS TEXAS" Instant Game prize of $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 "CASH ACROSS TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH ACROSS TEXAS" 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 ACROSS TEXAS" 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 8,277,525 tickets in the Instant Game No. 251. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 251- 4.0

Figure 3: GAME NO. 251 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5.00	1,131,217	7.32
$10.00	717,469	11.54
$15.00	137,905	60.02
$20.00	193,152	42.85
$50.00	60,329	137.21
$70.00	22,037	375.62
$100	13,135	630.19
$500	2,562	3,230.88
$5,000	76	108,914.80
$50,000	12	689,793.75

*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 3.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 251 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. 251, 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-200105995

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 4, 2001

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Instant Game No. 261 "Harvest Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 261 is "HARVEST GOLD". The play style is "tic-tac-toe".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 261 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 261.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $2,000, and CORN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 261 - 1.2D

Figure 1: GAME NO. 261 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV THOU
$2,000	TWO THOU
CORN SYMBOL	WIN $10

Table 2 of this section Figure 2:16 TAC GAME NO. 261 - 1.2E

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. 261 - 1.2E

CODE	PRIZE
$1.00	ONE
$2.00	TWO
$4.00	FOR
$5.00	FIV
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of

∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, 2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $2,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (261), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 261-0000001-000.

L. Pack - A pack of "HARVEST GOLD" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top 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 "HARVEST GOLD" Instant Game No. 261 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 "HARVEST GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose six (6) play symbols. If the player gets three (3) like amounts, the player will win that amount. If the player gets a corn symbol, the player will win $10 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 six (6) 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 six (6) 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 six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the six (6) 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 four (4) or more like play symbols on a ticket.

C. The auto win symbol will never appear on a ticket which contains three (3) like play symbols.

D. No more than one (1) auto win symbol on a ticket.

E. No more than one (1) pair will appear on a ticket containing an auto win symbol.

F. No more than two (2) pairs of like play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HARVEST GOLD" Instant Game prize of $1.00, $2.00, $4.00, $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 "HARVEST GOLD" Instant Game prize of $2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HARVEST GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HARVEST GOLD" 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 "HARVEST GOLD" 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 15,348,000 tickets in the Instant Game No. 261. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 261- 4.0

Figure 3: GAME NO. 261 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$1.00	1,288,984	11.91
$2.00	1,166,582	13.16
$4.00	429,744	35.71
$5.00	122,856	124.93
$10.00	122,830	124.95
$20.00	30,738	500.69
$50.00	11,001	1,395.15
$100	3,151	4,870.83
$500	584	26,280.82
$2,000	127	120,850.39

*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 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 261 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. 261, 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-200106040
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 8, 2001

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Instant Game No. 700 "Texas Trails"

1.0 Name and Style of Game.

A. The name of Instant Game No. 700 is "TEXAS TRAILS". The play style is "tic-tac-toe".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 700 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 700.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000, $30,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, and COVERED WAGON SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 700 - 1.2D

Figure 1: GAME NO. 700 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
COVERED WAGON SYMBOL	WIN

Table 2 of this section Figure 2:16 TAC GAME NO. 700 - 1.2E

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. 700 - 1.2E

CODE	PRIZE
$2.00	TWO
$4.00	FOR
$6.00	SIX
$8.00	EGT
$10.00	TEN
$12.00	TWL
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $1,000, $3,000, or $30,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (700), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 700-0000001-000.

L. Pack - A pack of "TEXAS TRAILS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 000 and 001 will be shown on the front of the pack. The backs of tickets 248 and 249 will show. Every other book will be opposite.

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 "TEXAS TRAILS" Instant Game No. 700 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 "TEXAS TRAILS" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If any of the player's Your Numbers match one of the three (3) Trail Numbers, the player will win the prize shown for that number. If the player gets a Covered Wagon 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 19 (nineteen) 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 19 (nineteen) 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 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. There will be no duplicate Trail Numbers on a ticket.

D. The auto win symbol will never appear more than once on a ticket.

E. The auto win symbol will only appear on winning tickets.

F. The auto win symbol will never appear as any of the Trail Numbers.

G. There will be no duplicate non-winning Your Number play symbols on ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS TRAILS" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00, or $200 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TEXAS TRAILS" Instant Game prize of $1,000, $3,000, or $30,000, 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 "TEXAS TRAILS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS TRAILS" 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 "TEXAS TRAILS" 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 5,180,750 tickets in the Instant Game No. 700. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 700- 4.0

Figure 3: GAME NO. 700 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	476,625	10.87
$4.00	305,736	16.95
$6.00	87,997	58.87
$8.00	20,723	250.00
$10.00	46,693	110.95
$12.00	51,679	100.25
$20.00	36,318	142.65
$50.00	19,203	269.79
$200	4,336	1,194.82
$1,000	87	59,548.85
$3,000	15	345,383.33
$30,000	3	1,726,916.67

*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 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 700 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. 700, 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-200106039

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 8, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An amended agreed order was entered regarding CITGO REFINING & CHEMICALS CO LP, Docket Nos. 1997-0151-IHW-E & 1998-0579-IHW-E on September 28, 2001.

Information concerning any aspect of this order may be obtained by contacting DAVID SPEAKER, Staff Attorney at (512)239-2548, Enforcement Coordinator at , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding BOBBY GLEN BURROWS & MARGARITO TRUJILLO, JR., Docket No. 1998-0736-MSW-E on September 28, 2001 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017 , Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BARBARA SHANE D.B.A. VILLAGE TRACE WATER CO., Docket No. 1999-1430-MWD-E on September 28, 2001 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PARTICIPATION DEVELOPMENT CORP. (TEXAS) INC, Docket No. 2000-1030-IWD-E on September 28, 2001 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W. SILVER, INCORPORATED, Docket No. 2000- 1273-AIR-E on September 28, 2001 assessing $2,875 in administrative penalties with $575 deferred.

Information concerning any aspect of this order may be obtained by contacting TOM JECHA, Enforcement Coordinator at (512)239-2576, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF O'BRIEN, Docket No. 2000-1255-PWS-E on September 28, 2001 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID SPEAKER, Staff Attorney at (512)239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FRANK CASTILLO DBA GALVANIZED INTERNATIONAL, Docket No. 2000-0095-AIR-E on September 28, 2001 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (871)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TIMOTHY POOLE, Docket No. 2000-0234-LII-E on September 28, 2001 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by LAURENCIA FASOYIRO, Staff Attorney at (713)422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TRINITY AQUA SYSTEMS, INC., Docket No. 1999- 1183-WOC-E on September 28, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KR & KR INVESTMENTS, INC. DBA NEIGHBORHOOD FINA, Docket No. 2000-0584-PST-E on September 28, 2001 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TROY NELSON, Staff Attorney at (713)422-8918, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF STANTON, Docket No. 2001-0189-PWS- E on September 28, 2001 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAN LANDENBERGER, Enforcement Coordinator at (915)570-1359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLYDE CLARDY DBA BASTROP WEST WATER SYSTEM, Docket No. 2001-0217-PWS-E on September 28, 2001 assessing $600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & P FUEL, INC., Docket No. 2000-1114-PST-E on September 28, 2001 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting GEORGE ORTIZ, Enforcement Coordinator at (915)698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAMMY'S GROCERIES, INC. DBA WALKER FOOD STORE, Docket No. 2001-0207-PST-E on September 28, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KEVIN KEYSER, Enforcement Coordinator at (713)422-8938, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200106081
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: October 9, 2001

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Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 4, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Vitcom Corporation for a Service Provider Certificate of Operating Authority, Docket Number 24790 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN HDSL, SDSL, RADSL, VDSL, T1-Private Line, Fractional T1, wireless and VoIP services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than October 24, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200106044
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

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Notice of Application for Waiver of Denial by NANPA of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 26, 2001, for waiver of denial by the North American Numbering Plan Administrator (NANPA) of applicant's request for NXX code.

Docket Title and Number: Application of GTE Southwest Incorporated doing business as Verizon for Waiver of Denial by NANPA of NXX Code Request. Docket Number 24738.

The Application: GTE Southwest Incorporated doing business as Verizon (Verizon) stated that NANPA denied Verizon's request for a new NXX code to be used to provide Optional, Two- Way Extended Metro Service (EMS) from the Willis Exchange into the Houston Metropolitan Area. The commission granted Verizon approval to make the EMS service available for customer use no later than February 22, 2002, in Docket Number 24029. Verizon maintains that in order for Verizon to provide this service to the customers of Willis, a new NXX is required in the 936 area code to ensure proper routing, translation and billing for EMS calls. Verizon stated that NANPA denied the request on the grounds that Verizon had not met the rate center-based months-to-exhaust criteria set forth in the Central Office Code (NXX) Guidelines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24738.

TRD-200106041
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §25.181

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 1, 2001, for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1).

Docket Title and Number: Application of West Texas Utilities Company for Waiver of the Competitive Solicitation Provision Under P.U.C. Substantive Rule §25.181(j)(1) for Market Transformation Program Contracts. Docket Number 24761.

The Application: West Texas Utilities Company, a subsidiary of American Electric Power Company, Inc. (AEP-WTU), filed a request for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1). AEP-WTU is requesting a waiver for the year 2002. Market transformation programs, as required by the rule for the delivery of energy efficiency services, must meet certain criteria, including a competitive bidding requirement for contract selection. However, the rule provides that a utility may request a waiver from the requirements of a competitive solicitation for good cause. For the reasons stated in the application, AEP-WTU requests that the commission grant AEP-WTU a good cause waiver of the competitive bid process, so that Frontier Associates, L.L.C. may continue to serve as contractor for AEP-WTU's market transformation program called the Texas Window Initiative for the year 2002.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24761.

TRD-200105997
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §25.181

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 1, 2001, for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1).

Docket Title and Number: Application of Southwestern Electric Power Company for Waiver of the Competitive Solicitation Provision Under P.U.C. Substantive Rule §25.181(j)(1) for Market Transformation Program Contracts. Docket Number 24762.

The Application: Southwestern Electric Power Company, a subsidiary of American Electric Power Company, Inc. (AEP-SWEPCO), filed a request for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1). AEP-SWEPCO is requesting a waiver for the year 2002. Market transformation programs, as required by the rule for the delivery of energy efficiency services, must meet certain criteria, including a competitive bidding requirement for contract selection. However, the rule provides that a utility may request a waiver from the requirements of a competitive solicitation for good cause. For the reasons stated in the application, AEP-SWEPCO requests that the commission grant AEP-SWEPCO a good cause waiver of the competitive bid process, so that Frontier Associates, L.L.C. may continue to serve as contractor for AEP-SWEPCO's market transformation program called the Texas Window Initiative for the year 2002.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing

and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24762.

TRD-200105998
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §25.181

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 2, 2001, for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1).

Docket Title and Number: Application of Central Power and Light Company for Waiver of the Competitive Solicitation Provision Under P.U.C. Substantive Rule §25.181(j)(1) for Market Transformation Program Contracts. Docket Number 24777.

The Application: Central Power and Light Company, a subsidiary of American Electric Power Company, Inc. (AEP-CPL), filed a request for waiver of the competitive solicitation provision imposed by P.U.C. Substantive Rule §25.181(j)(1). AEP-CPL is requesting a waiver for the year 2002. Market transformation programs, as required by the rule for the delivery of energy efficiency services, must meet certain criteria, including a competitive bidding requirement for contract selection. However, the rule provides that a utility may request a waiver from the requirements of a competitive solicitation for good cause. For the reasons stated in the application, AEP-CPL requests that the commission grant AEP-CPL a good cause waiver of the competitive bid process, so that Frontier Associates, L.L.C. may continue to serve as contractor for AEP-CPL's market transformation program called the Texas Window Initiative for the year 2002.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24777.

TRD-200106003
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an Application of Bandera Electric Cooperative, Inc. (BEC) to Amend Certificated Service Area boundaries within Medina County, Texas filed on September 28, 2001. The commission has jurisdiction over this matter pursuant to §§14.001, 37.051, 37.053, 37.054 and 37.056 of the Public Utility Regulatory Act (PURA) and P.U.C. Substantive Rule §25.101. Pursuant to P.U.C. Substantive Rule §25.101(c)(5)(B), the presiding officer must enter a final order in this docket within 45 days of the filing of the application, if the Applicant's request is deemed a minor boundary change. A summary of the application follows:

Docket Style and Number: Application of Bandera Electric Cooperative, Inc. to Amend Certificated Service Area Boundaries within Medina County, Texas - Docket Number 24754.

The Application: In its application, BEC states the proposed boundary change in Bear Spring Ranch Subdivision, Medina County, Texas is sought to provide service to Unit 9 in its entirely and future development within Bear Spring Ranch Subdivision. This would allow BEC and City Public Service of San Antonio (CPS) to identify a clear-cut boundary line within the Bear Spring Ranch Subdivision. Therefore, BEC asserts both utilities will be able to service their respective customers efficiently with out confusion. BEC has received approval and easement rights from the Bear Springs Ranch Developers. Upon approval of its application, BEC plans to construct approximately 7,000 feet of 7200 kVA primary distribution line and service drops as required. BEC estimates an additional 30 to 40 electric meters with 15 kVA each.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200106050
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 3, 2001, Omnicall, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60201. Applicant intends to relinquish its certificate.

The Application: Application of Omnicall, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24782.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than October 24, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24782.

TRD-200106004
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On October 3, 2001, Southwestern Bell Telephone Company and McLeodUSA Telecommunications 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 2001) (PURA). The joint application has been designated Docket Number 24783. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24783. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24783.

TRD-200106042
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

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Public Notice of Interconnection Agreement

On October 1, 2001, CenturyTel of Lake Dallas, Inc., CenturyTel of San Marcos, Inc., CenturyTel of Port Aransas, Inc., and State Telephone Texas, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24771. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24771. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24771.

TRD-200105999
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Public Notice of Interconnection Agreement

On October 1, 2001, CenturyTel of Lake Dallas, Inc., CenturyTel of San Marcos, Inc., CenturyTel of Port Aransas, Inc., and Max-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24772. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24772. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24772.

TRD-200106000

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Public Notice of Interconnection Agreement

On October 1, 2001, Southwestern Bell Telephone Company and Fair Financial, LLC doing business as Midstate Telecommunications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24773. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24773. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact

the commission at (512) 936-7136. All correspondence should refer to Docket Number 24773.

TRD-200106001
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Public Notice of Interconnection Agreement

On October 1, 2001, Southwestern Bell Telephone Company and Extel Enterprises, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24776. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24776. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24776.

TRD-200106002
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2001

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Public Notice of Interconnection Agreement

On October 3, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Paramount Communications, Inc. doing business as Segurotel, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24785. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24785. 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 November 2, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of

Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24785.

TRD-200106043
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

♦ ♦ ♦

Public Notice of Workshop Regarding Establishment of Uniform Cost Recovery Methods For 9-1-1 Dedicated Transport

The Public Utility Commission of Texas (commission) will hold a workshop regarding establishment of uniform cost recovery methods for 9-1-1 dedicated transport on Tuesday, October 23, 2001, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24305, *Rulemaking Relating to Establishment of Uniform Cost Recovery Methods for 9-1-1 Dedicated Transport* has been established for this proceeding. The commission, with the help of the telecommunications industry, hopes to develop uniform, consistent, and fair methods or mechanisms by which telecommunications providers may recover costs for 9-1-1 dedicated transport. This notice is not a formal notice of proposed rulemaking; however, the workshop will assist the commission in developing policy, with the expectation that a rule will be developed for publication and comment.

Questions concerning the workshop or this notice should be referred to John Mason, Legal Division, (512) 936-7287. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200106082
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 2001

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Request for Proposals for Auditor Services in Project Number 20400, *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*

A Request for Proposals (RFP) was released by the Public Utility Commission of Texas (commission) on October 8, 2001; the closing date is November 2, 2001. State funds will not be used to make payment under any resulting contract. The RFP has been released by the commission in order to conduct a compliance audit of Southwestern Bell Telephone Company (Southwestern Bell). Southwestern Bell has agreed to pay for the audit although it will be directed by the commission.

Eligible Proposers: Eligible Proposers must be neutral and impartial to parties in Project Number 20400, and must not have direct financial interest in the provision of telecommunications service in the state of Texas. Entities that meet the definition of a Historically Underutilized Business (HUB), as defined in Texas Government Code, Chapter 2161, §2161.001, are encouraged to submit a response.

Project Description. The commission seeks auditor services to conduct a compliance audit of the Southwestern Bell Telephone Company Performance Measures set forth in the Texas Public Utility Commission Audit Plan to Address PM 13 Flow-Through and LMOS issues (Commission Audit Plan). The Commission Audit Plan is attached to the Request for Proposals.

Selection Criteria. The proposal will be evaluated based on the ability of the proposer to provide the best value for the services rendered and the proposer's ability to provide the requested services. In addition to the proposer's ability to carry out all of the requirements contained in the RFP, demonstrated competence and qualifications of the proposer and the reasonableness of the proposed fee will be considered. When other considerations are equal, preference will be given to a proposer whose primary place of business is in Texas or who will manage the project wholly from its offices in Texas. The commission shall also give a preference among proposals that are otherwise comparable, to a proposal submitted by a HUB. Evaluation criteria will include, but are not limited to: the extent to which the Activity Plan describes the work to be performed and provides a clear understanding of the audit objectives; the propriety of the audit services to be rendered; the reasonableness of the number of work hours expected; the methods the contractor will use to fulfill the audit objectives; the qualifications and experience of assigned personnel; the financial ability of the firm to support the offered services; the quality and relevance of audits recently completed by the proposer; technical expertise; knowledge of the telecommunications industry; knowledge of the Section 271 decisions rendered by the Federal Communications Commission; independence from conflicting relationships; the total estimated project costs and the cost per person-hour; and other general evidence of ability to perform the required services.

Requesting the proposal. A complete copy of the RFP for auditor services may be obtained by writing Jennifer Fagan, Legal Division, Public Utility Commission, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, or jennifer.fagan@puc.state.tx.us, or calling (512) 936-7278. The RFP was issued October 8, 2001. You may also download the RFP from the commission website at www.puc.state.tx.us, under "What's New", and from the electronic business daily website sponsored by the Texas Department of Economic Development at www.esbd.tbpc.state.tx.us.

For Further Information. You may request clarifying information in writing only. For clarifying information about the RFP, contact Susan Durso, General Counsel, Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, fax (512) 936-7003, or susan.durso@puc.state.tx.us.

Deadline for Receipt of Responses. Responses must be filed under seal with a cover letter for filing in Project Number 20400 and received no later than 3:00 p.m. on Friday, November 2, 2001, in the Central Records Division of the Public Utility Commission of Texas, Room G-113, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. Regardless of the method of submission of the response, the commission will rely solely on Central Records' time/date stamp in establishing the time and date of receipt. Proposals should be filed under Project Number 20400.

TRD-200106062
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2001

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to develop the East Corridor Multi-Modal Alternatives Plan.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Senior Transportation Planner, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CST), Friday, November 16, 2001 at the MPO office:

Janet A. Kennison, Administrator

Metropolitan Planning Organization

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the project's consultant selection committee. The East Corridor Multi-Modal Alternatives Plan Consultant Selection Committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of $300,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200106070
Janet A. Kennison
Administrator
San Antonio-Bexar County Metropolitan Planning Organization
Filed: October 9, 2001

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Texas Department of Transportation

Request for Proposals - Texas Highway Safety Plan

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation is requesting single and multi-year project proposals from state agencies, local government agencies, metropolitan planning organizations, educational institutions, and public or non-profit organizations for the Texas Highway Safety Plan (HSP) for projects expected to begin fiscal year 2003 (October 1, 2002). Eligible and worthwhile projects may be initiated prior to this date if sufficient funding is available.

The Texas HSP is developed through a strategic performance planning process, with the selection of projects based on review of proposals. The program of work developed in the HSP is intergovernmental in nature and functions through cost reimbursable grants-in-aid agreements, partnerships, and contracts. Contracts with vendors will be made through the state purchasing process.

Authority and Responsibility: Federal grant involvement in traffic safety dates from the passage of the National Highway Safety Act of 1966 (23 USC §401, et seq.). Texas passed supporting legislation, the Texas Traffic Safety Act, in 1967 (Transportation Code, Chapter 723). The Texas Traffic Safety Program was made an integral part of the Texas Department of Transportation in 1979. Working through the department's 25 districts for local projects, the program is administered at the state level by the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

HSP Review and Approval: The HSP is prepared and submitted to the Transportation Commission for approval in June or July of each year. Upon approval, the HSP is submitted to the Governor's Office for review and comment and then forwarded to the federal government. The HSP becomes operational on October 1 of every year. The National Highway Traffic Safety Administration (NHTSA) of the U.S. DOT administers the funds to implement the HSP. Funds are to be used to support State problem identification, planning and implementation of a program to address a wide range of highway safety problems that are related to human factors and the roadway environment and which contribute to the reduction of crashes, deaths and injuries.

The traffic safety program is designed primarily as the source of invention and motivation, rather than as financial support for continuing operation. Therefore, in an effort to preserve the "seed" money concept, Texas Traffic Safety Program project grant agreements supported with non-dedicated federal funds are limited to the length of the grant period and usually do not receive extended funding beyond three years. Also, "supplanting" (use of federal funds to support personnel or an activity that is already supported by local or state funds) is prohibited.

Funding is also provided from state, local, and other federal and private sources.

HSP Program Areas: Proposals are being solicited for the following 13 program areas:

1. Police Traffic Services and Speed Control: selective traffic enforcement projects (STEPs) to apprehend reckless drivers, enforce posted speed limits and other traffic law violations, and specialized training for traffic law enforcement officers and judicial system officials.

2. Alcohol and Other Drug Countermeasures: STEPs to apprehend impaired drivers, specialized law enforcement training, public information programs on alcohol/other drug use and driving, education programs for convicted DWI offenders and various youth alcohol education programs promoting traffic safety. Proposals for projects that enhance the development and implementation of innovative programs to combat impaired driving are also solicited.

3. Emergency Medical Services: traffic safety related training primarily for rural emergency medical service providers, public education, and injury prevention.

4. Occupant Protection: surveys to determine usage rates and to identify high-risk non-users, comprehensive programs to promote correct usage of child safety seats and other occupant restraints, STEPs, and evaluations.

5. Traffic Records: analyze vehicular crash occurrences and causal factors and support joint efforts with other agencies to improve the state's Traffic Records System. All information resource-related activities will be subject to TxDOT information resource procurement procedures.

6. Roadway Safety: traffic safety and/or traffic engineering education.

7. Motorcycle Safety: public education and motorcycle training.

8. Planning and Administration: problem identification, countermeasure development and operation of the Traffic Safety Program and traffic safety administrative functions.

9. Safe Communities and College Traffic Safety Programs: problem identification, plan development, and program implementation for selected cities, counties, state agencies or college/university campuses. 10. Driver Education and Behavior: driver education, and public information and education. Project proposals that impact risky behaviors likely to endanger people or property, such as aggressive driving, drowsy or fatigued driving.

10. Driver Education and Behavior: driver education, and public information and education. Project proposals that impact risky behaviors likely to endanger people or property, such as aggressive driving, drowsy or fatigued driving.

11. School Bus Safety: school bus transportation administrator support, school bus driver education and training.

12. Pedestrian/Bicycle Safety: traffic law enforcement, public education and community programs.

13. Commercial Vehicle Safety: traffic law enforcement, information and education, and innovative projects to reduce commercial vehicle crashes.

Traffic Safety Goals and Strategies: The HSP is developed to support the goals, and the strategies to achieve those goals, of the traffic safety strategic plan. A proposal must state which of the following goals and strategies for the HSP program area it will support:

1a. Police Traffic Services Goals: to increase effective enforcement and adjudication of traffic safety related laws to reduce fatal and serious injury crashes

1b. Police Traffic Services Strategies:

1) Increase enforcement of traffic safety-related laws and the adjudication of all traffic law violations

2) Increase training in traffic law enforcement (TLE) and adjudication

3) Increase TLE technical and managerial support to local enforcement agencies and highway safety professionals

2a. Alcohol and Other Drug Countermeasures Goals:

1) To decrease the number of drivers under age 21 involved in DWI-related crashes

2) To reduce DWI-involved crashes, fatalities and injuries

2b. Alcohol and Other Drug Countermeasures Strategies:

1) Increase alcohol and other drug traffic safety enforcement

2) Increase alcohol and other drug detection awareness training for traffic safety advocates

3) Enhance the state alcohol offender education programs

4) Coordinate and/or conduct public information and education

5) Improve the coordination of DWI handling between law enforcement and the judiciary at the community level.

3a. Emergency Medical Services Goal: to improve EMS care and support provided to motor vehicle crash trauma victims in rural areas.

3b. Emergency Medical Services Strategies:

1) To increase the availability of EMS training in rural areas

2) Increase EMS involvement in local community safety efforts

4a. Occupant Protection Goal: to increase overall and correct occupant protection use

4b. Occupant Protection Strategies:

1) Increase enforcement of occupant protection laws

2) Provide occupant protection training and education

3) Promote and support occupant protection projects at the community level

4) Increase public information and education campaigns

5) Conduct evaluation of results of occupant protection use.

5a. Traffic Records Goals:

1) To improve the timeliness, accuracy, quality, and availability of crash record data.

2) To improve linkages between traffic records databases

3) To improve the data collection of trauma data statewide.

5b. Traffic Records Strategies:

1) Develop a new traffic crash records information system

2) Support traffic crash analysis efforts

3) Support implementation of an EMS data system and data links to traffic records.

6a. Roadway Safety Goals:

1) To decrease work zone traffic crash-related fatalities and injuries by identifying roadway safety problems

2) To increase knowledge of roadway safety and current technologies among people involved in engineering, construction, and maintenance areas at both the state and local level

6b. Roadway Safety Strategies

1) Provide traffic safety problem identification to local jurisdictions

2) Conduct program assessment of Roadway Safety

7a. Motorcycle Safety Goal: to reduce the number of motorcycle-related fatalities and serious injuries

7b. Motorcycle Safety Strategies:

1) Conduct public information and education efforts

2) Evaluate, assess, and communicate motorcycle injury and fatality trends.

8a. Planning and Administration Goals:

1) Provide effective and efficient management of the Texas Traffic Safety Program through up to date policies and procedures, training and staff development.

2) Comply with state and federal laws, regulation and procedures in the operation and administration of the Traffic Safety Program.

8b. Planning and Administration Strategies:

1) Review and update program procedures as needed

2) Provide procedures and training on highway safety planning and project development

3) Ensure availability of program and project management training

4) Maintain coordination of traffic safety efforts, provide technical assistance, and conduct periodic project monitoring and evaluation.

9a. Safe Communities and College Traffic Safety Programs Goal: to prevent traffic related fatalities and injuries through establishing integrated community traffic safety programs

9b. Safe Communities and College Traffic Safety Programs Strategies:

1) Provide training programs on how to initiate and conduct community based programs

2) Support the Safe Communities process

3) Provide management support to implement community traffic safety programs

10a. Driver Education and Behavior Goal: to increase public knowledge, perception and understanding of traffic safety.

10b. Drivers Education and Behavior Strategies:

1) Develop and implement public information and education efforts on traffic safety issues

2) Provide assistance to update driver's education curriculum

3) Conduct and assist local, state and national traffic safety campaigns

4) Provide opportunities for traffic safety advocates to increase their knowledge of programs and issues.

11a. School Bus Goal: to reduce school bus-related crashes, injuries and fatalities

11b. School Bus Strategy: conduct school bus driver and school transportation official training programs directly related to improving safety

12a. Pedestrian/Bicycle Traffic Safety Goals:

1) To decrease motor vehicle-related pedestrian and bicycle fatalities and injuries.

2) To increase pedestrian and bicycle safety knowledge and awareness

12b. Pedestrian/Bicycle Traffic Safety Strategies:

1) Identify problem locations/areas where conflict between motor vehicles and

pedestrians/bicycles is high.

2) Promote public information and education efforts and training to lessen the motor

vehicle/pedestrian/bicycle potential for conflict.

13a. Commercial Vehicle Goals:

1) To increase traffic safety knowledge, perception, understanding, and skills for sharing the roadway with commercial vehicles

2) To increase enforcement of traffic laws for commercial vehicles

13b. Commercial Vehicle Strategies:

1) Provide information and education materials to educate the public on sharing the road with commercial vehicles

2) Incorporate commercial vehicle PI&E materials into the driver training curriculum

3) Develop partnerships with commercial vehicle industry to increase traffic safety

4) Increase enforcement of traffic safety laws for commercial vehicles

Project Selection Process: Shortly after the project proposal due date, traffic safety program and project managers review and evaluate each proposal for applicability to Texas' traffic safety problems. Each project proposal is then scored against a number of selected criteria. Criteria include strength of problem identification supported with verifiable, current and applicable documentation of the traffic safety problem; quality of the proposed solution plan; realistic performance goals; time-framed action plan; cost eligibility; amount of matching funding provided by proposal, and necessity and reasonableness of budget. Proposals that include the purchase and distribution of child passenger safety seats or other occupant protection paraphernalia must contain 100% match. Proposals for Selective Traffic Enforcement Projects should consider including funding for additional court costs to process the citations issued under the project. Proposals for Comprehensive and Safe & Sober STEPS must include provisions that no more than 50% of the effort issued will be for speed violations. Proposals for education or training using public schools must include written support from target schools that end product will be included in curriculum. Proposals for educational courses that must be certified by a state agency must come from that agency. Separate documents with information pertaining to the submitting agency's qualifications, commitment, availability of external resources, task force associations, previous traffic safety experience may also be attached or included with the proposal. Once the ranking process is complete, projects are assigned priority for available funding. Depending on the availability of funding, selected eligible projects that can be funded prior to the start of the next fiscal year may be implemented. Current project proposal application forms and instructions, plus other related documents (for example, a current HSP and "Texas Highway Safety Performance Plan for Fiscal Year 2002"), are available upon request by contacting the Traffic Operations Division, Traffic Safety Section, attention Mr. Bill Strawn at 512/416-2613 or from the Traffic Safety Specialist at the nearest TxDOT district office.

Project Proposals: Signed proposals must be received by January 10, 2002. Proposals may be submitted to the nearest TxDOT District Office, Attention: Traffic Safety Specialist or mailed directly to Susan N. Bryant, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. Proposals received after the due date will not be accepted.

TRD-200105989
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 3, 2001

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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