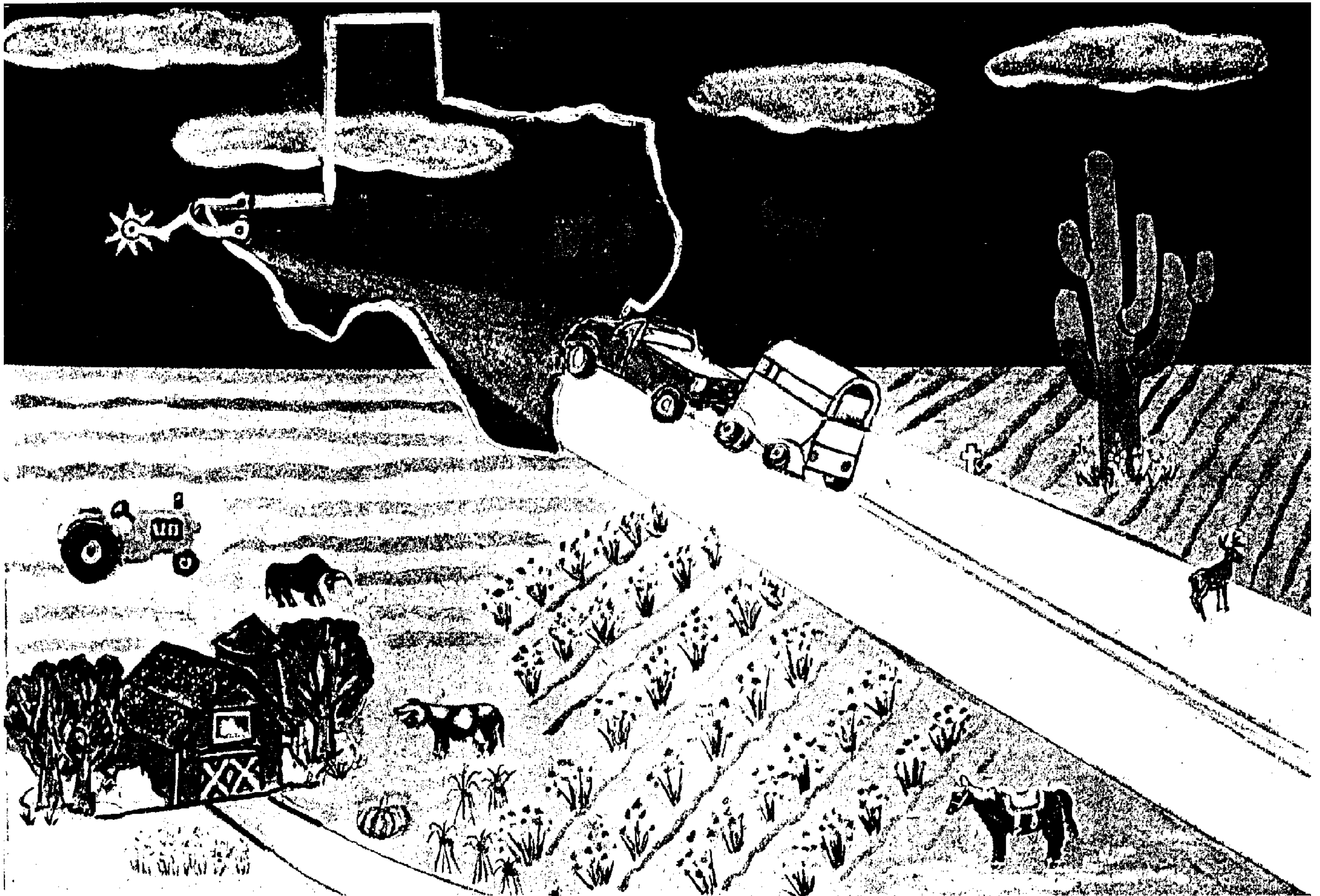
Texas Register

Volume 27 Number 46 November 15, 2002 Pages 10675-10826



Ramiro Saldivar, 8th Grade

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

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

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

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
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Open Meetings

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

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

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

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

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

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

THE GOVERNOR

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

Appointments

Appointments for November 5, 2002

Appointed to the State Board of Examiners of Dietitians for a term to expire on September 1, 2007, Claudia L. Lisle of Amarillo (replacing Dorothy Shafer of Fredericksburg whose term expired).

Rick Perry, Governor

TRD-200207240

THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0565

The Honorable Tim Cone, Upshur County Criminal District Attorney, Upshur County Justice Center, 405 North Titus Street, Gilmer, Texas 75644

Re: Whether section 130.908 of the Local Government Code applies when an incumbent county commissioner is not renominated to office in a primary election, and related question (RQ-0540-JC)

S U M M A R Y

Section 130.908 of the Local Government Code applies after a person other than the incumbent commissioner has been elected to the office in the general election. It requires commissioners court approval of a commissioner's expenditures "if a person other than [the] incumbent county commissioner is elected to the office of county commissioner of a county with a population of less than 50,000, during the time following the date the results of the official canvass of the election returns are announced." Tex. Loc. Gov't Code Ann. §130.908 (Vernon 1999). It requires the commissioners court to preapprove an affected incumbent commissioner's commitment of county funds following the general election.

Opinion No. JC-0566

Mr. William M. Franz, Executive Director, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701-2603

Re: Procedure for certification of foreign educators by State Board for Educator Certification (RQ-0541-JC)

S U M M A R Y

The State Board for Educator Certification may require a foreign-certified educator who qualifies for certification pursuant to section 21.052(a) of the Education Code to produce a "Letter of Good Standing" from the foreign jurisdiction in which the educator is certified. However, if for good cause the applicant cannot produce such a letter, the board should accept alternative documentation. Immigration status does not exempt a foreign national from the strictures of a uniform state licensing scheme.

Opinion No. JC-0567

Mr. Jeff Moseley, Executive Director, Texas Department of Economic Development, P.O. Box 12728, Austin, Texas 78711-2728

Re: Whether a business located in an enterprise zone and presently designated an "enterprise project" and allocated the maximum jobs and tax benefits may receive an additional and concurrent enterprise project designation in the same zone and receive an additional maximum job allocation and the related tax benefits (RQ-0542-JC)

S U M M A R Y

Under chapter 2303 of the Government Code and section 151.429 of the Tax Code, a business entity located in an enterprise zone and presently designated an "enterprise project" and allocated the maximum jobs and related tax benefits may not receive an additional and concurrent enterprise project designation in the same enterprise zone and an additional maximum job allocation and the related tax benefits.

Opinion No. JC-0568

The Honorable W.C. Kirkendall, District Attorney, 25th Judicial District of Texas, 113 South River, Suite 205, Seguin, Texas 78155

Re: Whether a county commissioners court may set the daily reimbursement rate of grand jurors' expenses at a rate different from petit jurors' expenses, and related question (RQ-0548-JC)

S U M M A R Y

Section 61.001 of the Government Code requires a county commissioners court to reimburse all jurors at the same rate, except as subsection (d) permits. *See* Tex. Gov't Code Ann. §61.001 (Vernon Supp. 2002). Subsection (d) expressly authorizes a commissioners court to "reduce or eliminate the daily reimbursement" paid to jurors "who attend court for only one day or a fraction of one day" and to use those retained funds to "increase the daily reimbursement . . . for jurors . . . who attend court for more than one day." *Id.* §61.001(d). Thus, a commissioners court may not set the daily reimbursement rate for grand jurors at a rate different from that set for petit jurors, based upon a juror's status as grand or petit. Similarly, a commissioners court may not set different daily reimbursement rates for petit jurors based upon the court in which a juror serves, *i.e.*, district court, county court, or justice court.

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

TRD-200207144
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: October 31, 2002

♦ ♦ ♦

Opinions

Opinion No. JC-0569

The Honorable Jeff Wentworth, Chair, Committee on Redistricting, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

The Honorable Edmund Kuempel, Chair, Committee on State Recreational Resources, Texas House of Representatives, P.O. Box 12068, Austin, Texas 78711

Re: Consequences of the defeat of a ballot proposition confirming the creation of the Southeast Trinity Groundwater Conservation District, and related questions. (RQ-0544-JC)

S U M M A R Y

Because the voters elected not to confirm the Southeast Trinity Groundwater Conservation District in November 2001, the initial directors elected at that election do not take office. Rather, the temporary directors continue in their positions, and subsequent confirmation elections may be called by the board of temporary directors.

A future confirmation election may not include a proposition to authorize the district to impose a maintenance tax. Comal County, the county in which the Southeast Trinity Groundwater Conservation District is located, must fund future confirmation elections if the district is unable to do so. The board of temporary directors is permitted, but not required, to call and hold a future confirmation election, and it is not required to hold such an election in each of the three years after the initial election in November 2001.

The temporary directors may not dissolve the district, whether or not the board calls and holds a future confirmation election. If the district has not been confirmed by September 1, 2005, it will dissolve by operation of law. The board of temporary directors has that authority set out in section 5 of the 1999 Act creating the district, *see* Act of May 28, 1999, 76th Leg., R.S., ch. 1331, §5, 1999 Tex. Gen. Laws 4536, 4538, and section 36.206 of the Water Code, *see* Tex. Water Code Ann. §36.206 (Vernon Supp. 2002).

Opinion No. JC-0570

Mr. William M. Jeter III, Chairman Office of Rural Community Affairs P.O. Box 12877 Austin, Texas 78711-2877

Re: Whether the Rural Foundation created by the Seventy-seventh Texas Legislature in chapter 110 of the Health and Safety Code may finance rural programs that are not health programs. (RQ-0552-JC)

S U M M A R Y

The Rural Foundation, a nonprofit corporation created by the Seventy-seventh Texas Legislature, is not authorized to finance programs other than rural health programs.

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

TRD-200207238
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 6, 2002

♦ ♦ ♦

Request for Opinions

RQ-0621

The Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the Board of Medical Examiners may deny licensure to international medical graduates who have completed subspecialty training at facilities that are not accredited in subspecialty training. (Request No. 0621-JC)

Briefs requested by December 2, 2002

RQ-0622

Mr. William M. Franz, Executive Director, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603

Re: Availability to the State Board for Educator Certification of an evaluation of a beginning teacher for the purpose of determining the status of an educator preparation program under section 221.045, Education Code, and related questions. (Request No. 0622-JC)

Briefs requested by December 2, 2002

RQ-0623

The Honorable Delwin Jones, Chair, House Redistricting Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether a municipality may publish a list of registered sex offenders on a local municipal access cable channel, and related questions. (Request No. 0623-JC)

Briefs requested by December 2, 2002

RQ-0624

The Honorable Scott W. Rosekrans, San Jacinto County Criminal District Attorney, 1 State Highway 150, Room 21 Coldspring, Texas 77331

The Honorable Ray Stelly, CPA San Jacinto County Auditor, 1 State Highway 150, Room B1 Coldspring, Texas 77331

Re: Whether a county auditor is authorized to audit certain accounts that do not consist of county funds, and related questions. (Request No. 0624-JC)

Briefs requested by December 5, 2002

RQ-0625

The Honorable William M. Jennings, Gregg County Criminal District Attorney, 101 East Methvin Street, Suite 333, Longview, Texas 75601

Re: Effective date of licensure for a bail bondsman who practiced his occupation before the creation of a county bail bond board. (Request No. 0625-JC)

Briefs requested by December 6, 2002

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

TRD-200207237
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 6, 2002

♦ ♦ ♦

EMERGENCY RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for all of Pest Management Zones 2 through 6. A prior emergency amendment filed by the department on October 14, 2002, granted an extension until October 15, 2002 for Zone 2, Area 1; Zone 2, Area 2; Zone 2, Area 3; Zone 2, Area 4; Zone 3, Area 1 (Jackson and Matagorda county); Zone 3, Area 2 (Austin and Brazoria county); and also granted an extension until October 29, 2002 for Zone 3, Area 1 (Wharton County west of the Colorado River) and Zone 3, Area 2 (Fort Bend and that portion of Wharton County east of the Colorado River). That emergency amendment, expiring on November 2, has been withdrawn and is superceded by this filing.

Section 20.20(a) is now being amended on an emergency basis to extend the cotton destruction deadline for the areas covered by all of Pest Management Zones 2 through 5 until November 14, 2002. The current destruction deadline for Zone 2, Areas 1, 2 and 3 is September 1. The current deadline for Zone 2, Area 4 and Zone 3, Area 1, is October 1. The current deadline for Zone 3, Area 2, is October 15. The current deadline for Zone 4 is October 10. The current deadline for Zone 5 is October 20. The destruction deadline for Zone 6 is amended from the current date of October 31, to November 28, 2002 Zone 6.

The department is acting on behalf of cotton farmers in Zone 2 (Duval, Webb, Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy, Aransas, San Patricio, Bee, Live Oak, Calhoun, Goliad, LaSalle, McMullen, Refugio, and Victoria counties); Zone 3 (Jackson, Matagorda, Wharton, Austin, Brazoria, and Fort Bend counties); Zone 4 (Atascosa, Bexar, DeWitt, Dimmit, Frio, Karnes, Kinney, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala counties); Zone 5 (Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington counties); and Zone 6 (Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson counties). The department believes that changing the cotton destruction date is both necessary and appropriate. This extension is effective only for the 2002 crop year.

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

The emergency amendment to §20.22(a) changes the date for cotton stalk destruction for Zone 2, Zone 3, Zone 4 and Zone 5 to November 14, 2002, and changes the date for cotton stalk destruction for Zone 6 to November 28.

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

§20.22. Stalk Destruction Requirements.

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

Figure: 4 TAC §20.22(a)

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

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207145
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: November 1, 2002
Expiration Date: November 29, 2002
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.18

The Board of Nurse Examiners adopts on an emergency basis amendments to 22 TAC §217.18, concerning Registered Nurse First Assistants. The Board met on October 24, 2002 and approved the amendment to §217.18 on an emergency basis that addresses the minimum requirements for registered nurses functioning as first assistants in surgical settings. This amendment is being proposed concurrently on a permanent basis. Based on reports from the nursing community, the stated emergency is that experienced registered nurses may be replaced by less qualified assistants if nurses are removed from the operating room because they do not meet the criteria delineated in §217.18. The nursing community has reported that there are a significant number of RNs first assisting who do not meet the current criteria of §217.18.

The Board has maintained that the current statute and rule are consistent with the educational and certification requirements in the Board's previous position on the issue of first assisting (adopted 1/1995). The Texas Nurses Association, Texas Hospital Association, Texas Council of perioperative RNs, and Texas RNFA Network, however, have jointly requested that the Board suspend its previously held policy and delay implementation of the requirements for those RNs who meet certain defined criteria. They expressed concern that RNs who were first assisting without having met the requirements stated in the Board's previous position statement would be replaced by individuals who are potentially less qualified and requested the Board adopt an alternate set of requirements that must be met by those RNs who are safe practitioners but who do not currently meet the criteria as specified in §301.1525 of the Nursing Practice Act and rule 217.18. These alternate criteria would permit these RNs to continue to first assist until January 1, 2005. After that date, all RNs who elect to first assist must meet the criteria specified in the Nursing Practice Act.

The emergency amendment to 22 TAC §217.18 is adopted on an emergency basis under the authority of the Texas Occupations Code §301.151 and §301.1525 that authorize the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurse first assistants.

§217.18. Registered Nurse First Assistants.

(a) Qualifications for registered nurse first assistants (RNFAs):

(1) [~~(a)~~] A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall submit an application for registration and all applicable fees to the Board and shall submit evidence including, but not limited to, the following:

(A) [~~(1)~~] Current licensure as a registered nurse in the State of Texas or reside in any party state and hold a current, valid registered nurse license in that state;

(B) [~~(2)~~] Current [~~has a current~~] national certification (CNOR) in perioperative nursing; and

(C) [~~(3)~~] Completion of [~~has completed~~] a nurse first assistant educational program approved by an organization recognized by the Board; or

(D) [~~(4)~~] Current [~~has a current~~] certification as a registered nurse first assistant (CRNFA) by a national certifying body recognized by the Board.

(2) [~~(b)~~] After review by the Board, notification of registration shall be mailed to the RNFA informing him/her that the registration process has been completed.

(3) [~~(c)~~] The registered nurse whose functions include acting as a first assistant in surgery shall know and conform to the Texas Nursing Practice Act; current Board rules, regulations, and standards of professional nursing; and all federal, state and local laws, rules, and regulations affecting the RNFA specialty area. When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse.

(4) [~~(d)~~] A registered nurse functioning as a first assistant in surgery shall comply with the standards set forth by the AORN.

(b) A registered nurse not qualifying under subsection (a) of this section may first assist until January 1, 2005 if he/she:

(1) Has current licensure as a registered nurse in the State of Texas or resides in any party state and holds a current, valid registered nurse license in that state;

(2) Was actively engaged in first assisting as of March 1, 2002;

(3) Does not use any titles to imply that the person is a nurse first assistant or otherwise hold him/herself out as a nurse first assistant;

(4) Has operating room experience that meets the following criteria:

(A) CNOR eligible (meets qualifications to apply and sit for the national certification examination in perioperative nursing (CNOR) and

(B) One year or 500 hours of experience first assisting as of March 1, 2002; and

(5) Complies with BNE Standards of Professional Nursing Practice §217.11(12) of this title requiring RNs to accept only assignments that take into consideration patient safety and that are commensurate with the RN's educational preparation, experience, knowledge and physical and emotional ability;

(c) Effective January 1, 2005, the exceptions outlined in subsection (b) of this section no longer apply, and any registered nurse first assisting must meet the requirements outlined in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on October 28, 2002.

TRD-200207077
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective Date: October 28, 2002
Expiration Date: February 25, 2003
For further information, please call: (512) 305-6823

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER A. GENERAL GUIDELINES

1 TAC §55.3, §55.4

The Office of the Attorney General proposes amendments to 1 TAC §55.3 and §55.4 concerning cooperation requirements for persons receiving public assistance who are referred to the Office of the Attorney General for child support services.

Recipients of medical assistance, Temporary Assistance for Needy Families (TANF), and state-paid TANF, assume different cooperative requirements as a condition of eligibility depending on the type of public assistance received. These amendments are proposed to explain the different cooperation requirements as mandated by Family Code §231.115, to comply with Medicaid provisions found at §1912(a)(1) of the Social Security Act, and to incorporate additional clarification as a result of enactment of Human Resources Code, Title 2, Chapter 34, State Temporary Assistance and Support Services Program.

Cynthia Bryant, IV-D Director, Child Support Division, has determined that for the first five year period, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Bryant also has determined that the public benefit anticipated as a result of the amendments will be to provide clear guidance to all recipients of public assistance on what they must do to cooperate and what will occur if they fail to cooperate. The proposed amendments will not have an adverse economic effect on small businesses because the amendments to these sections impose no additional burden on anyone. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments may be submitted to Kathy Shafer, Child Support Division, General Counsel section, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017, Mail Code 039, (512) 460-6134.

The amendments are proposed under Texas Family Code §231.002.

The amendments affect Human Resources Code, Title 2, Chapter 34, State Temporary Assistance and Support Services Program.

§55.3. Cooperation Required for Recipients of Child Support Services.

(a) Cooperation by Temporary Assistance for Needy Families (TANF) Program Recipients. All TANF recipients whose assistance is funded under Title IV, Part A, of the Social Security Act are required to cooperate with the Title IV-D Agency in performing the required IV-D functions set out in Texas Family Code, Chapter 231, and other applicable provisions of law, unless there exists good cause as specified under §55.5 of this subchapter (relating to Good Cause for Failure to Cooperate).

(1) (No change.)

(2) To accomplish the above, a recipient must:

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

(F) pay to the Title IV-D Agency any support payments received from the obligor after an assignment under 42 USC §608(a)(3) has been made, including current and past due support payments; [~~and any amounts due to the Title IV-D Agency for recovery of retained direct support payments; and~~]

(G) pay to the Title IV-A Agency any overpayment of TANF resulting from the receipt of direct support payments, and

(H) [~~(G)~~] perform any other action required of a recipient by state and federal law or federal regulations applicable to Title IV-D.

(b) Cooperation by Medical Assistance-Only Recipients. All persons referred to the Title IV-D Agency pursuant to 42 USC §654(4), who are receiving Medical Assistance-Only benefits [~~pursuant to an assignment of medical support rights under 42 CFR §433.146,~~] are entitled to receive all IV-D services.

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

(c) - (d) (No change.)

§55.4. Determination of Cooperation.

The Title IV-D Agency shall make the determination as to whether an individual is cooperating as required by §55.3 of this subchapter relating to Cooperation Required for Recipients of Child Support Services.

(1) If a recipient of public assistance (TANF or Medical Assistance-Only) fails to cooperate:

(A) (No change.)

(B) The Department of Human Services must immediately notify the recipient and impose penalties [~~sanctions~~] pursuant to Human Resources Code, §31.0032;[~~,~~]

(i) by reducing the recipient's next grant award if a TANF recipient, or[~~.~~]

(ii) terminating only the recipient's medical benefits if a Medical Assistance-Only recipient.

(C) (No change.)

(D) The penalty [sanction] for failure to cooperate shall remain until the recipient complies with the specific IV-D requirement that caused the penalty [sanction]. When the Title IV-D Agency determines the recipient is cooperating:

(i) (No change.)

(ii) the Department of Human Services shall lift the penalty [sanction].

(2) If only the child(ren) receives Medical Assistance-Only, the Title IV-D agency shall notify the individual who fails to cooperate that IV-D services may be terminated.

(3) If a person who is a former recipient of public assistance (TANF or Medical Assistance-Only) fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate may result in termination of IV-D services.

(4) [(2)] If a person who has never been[is not] a recipient of public assistance fails to cooperate, the Title IV-D Agency shall notify the person that failure to cooperate will result in termination of IV-D services.

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

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

TRD-200207167
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 15, 2002
For information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §14.1

The Texas Department of Agriculture (the department) proposes an amendment to §14.1, concerning handling and marketing of perishable commodities. The definition for the term "Agent" has been amended by removing the word "either" and adding the word "and" in the definition. This amendment is proposed to clarify that an agent may be a buying agent and/or a transporting agent.

Thomas R. Garza, Coordinator of Commodity Programs, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the rule, as proposed.

Mr. Garza has also determined that the public benefit anticipated as a result of enforcing the rule will be to facilitate registration under the perishable commodities handling and marketing program. There will be no fiscal implication to micro-businesses or produce dealers or distributors and or others required to comply with the rule, as proposed.

Comments on the proposal may be submitted to Thomas R. Garza, Coordinator of Commodity Programs, 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 amendment to §14.1, is proposed under the Texas Agriculture Code (the Code), §101.010, which provides the Department with the authority to adopt rules related to transporting agents and buying agents.

The code affected by this proposal is the Texas Agriculture Code, Chapter 101 - 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapters 101, and 103 and Chapter 1, Subchapter A of this title (relating to the General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agent--An employee authorized to act for and on behalf of a licensee as [either] a buying agent and/or a transporting agent.

(2) - (8) (No change.)

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

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

TRD-200207168
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-4075

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 28. STATE ARCHEOLOGICAL LANDMARKS

The Texas Historical Commission (THC) proposes the repeal of Chapter 28, §§28.1 - 28.5, concerning State Archeological Landmarks and proposes new Chapter 28, §§28.1 - 28.7, concerning Historic Shipwrecks. The new sections will replace the repealed sections and they are contemporaneously proposed in this issue of the *Texas Register*.

This repeal and replacement is being proposed in an effort to update and modify the rules associated with historically significant shipwrecks that are either submerged under the waterways or contained on, in, or under the public lands of the State of Texas.

Outdated references to the Texas Antiquities Committee are proposed for change and an outdated system for identifying state land tracts that may contain submerged shipwrecks and updating of the survey requirements are also proposed as part of the rule replacement.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There will also be no effect on small businesses or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Mr. Oaks has also determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of the repeals and the replacement of the existing rules will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

13 TAC §§28.1 - 28.5

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

The repeal is proposed under §442.005(q), Title 13, Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The repeals implement §§442.005(b), 442.009(r), 442.007(c) and 442.007(e) of the Texas Government Code.

§28.1. Purpose and Scope.

§28.2. Definitions.

§28.3. Findings and Policy Determination.

§28.4. State Land Tracts Designated by the Committee as Containing State Archeological Landmarks in Texas' Submerged Lands.

§28.5. Conduct of Activities.

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 30, 2002.

TRD-200207134
F. Lawrence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-5711

CHAPTER 28. HISTORIC SHIPWRECKS

13 TAC §28.1 - 28.7

The new rules are proposed under §442.005(q), Title 13, Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter.

No other statutes, articles or codes are affected by these new rules.

§28.1. Purpose and Scope.

(a) Purpose. The purpose of these sections is to describe avoidance or protection procedures applicable to persons who conduct or cause to be conducted any activity which would cause damage to sunken or abandoned pre-twentieth century ships and other historically significant wrecks of the sea.

(b) Scope. These sections apply only to activities that would cause damage to sunken or abandoned pre-twentieth century ships and other historically significant wrecks.

(c) Claim of title. These sections do not purport to alter any ownership or claim of title by the state to any sunken or abandoned pre-twentieth century ships and wrecks of the sea.

§28.2. Definitions.

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

(1) Avoidance Margin--the area around a significant magnetic anomaly or sonar target in which the proposed activity cannot occur, i.e. the anomaly or target must be avoided by the margin, unless the source of the anomaly or target is investigated and shown, to the satisfaction of the commission, to be not historically significant or is mitigated in some fashion approved by the commission.

(2) Commission--the Texas Historical Commission.

(3) Person--any individual, firm, partnership, association, corporation that is public or private and profit or nonprofit, trust, political subdivision, agency of the state, or agency of the federal government who conducts or causes to be conducted any activity which would cause damage to a state archeological landmark.

(4) Shipwreck--any watercraft or aircraft that is 50 years old or older, including any part of them or contents of them, and is sunken or abandoned in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state.

(5) Significant magnetic anomaly--best engineering judgment should be used to determine if the source of a magnetic anomaly might be historically significant. Determination of magnetic anomaly source significance must be made by a person experienced in the archeological interpretation of magnetometer data, taking into consideration the amplitude, duration, and complexity of each anomaly or anomaly cluster.

(6) Significant sonar target--best engineering judgment should be used to determine if the source of a sonar target might be historically significant. Determination of potential target source significance must be made by a person experienced in the archeological interpretation of sonar data, taking into consideration the size and shape of the visible target and any associated magnetometer data which might reveal the potential for buried, unseen parts of the target.

(7) State Archeological Landmark--any cultural resource located in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state, or a site officially designated as a landmark at an open public hearing before the commission. Any pre-twentieth century shipwreck is automatically a state archeological landmark.

Any shipwreck, as defined in paragraph (4) of this section, that is not pre-twentieth century but is determined to be historically significant by the Commission is also eligible to be officially designated as a state archeological landmark.

(8) Submerged land--land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas or any political subdivision of the State of Texas.

§28.3. Procedures.

After consultation with affected persons and after due reflection on the commission's obligations under the Antiquities Code of Texas, the commission makes the following determinations of fact and policy:

(1) It is the in the public interest of the State of Texas to locate, protect, and preserve all shipwrecks in Texas' submerged lands.

(2) The commission shall determine and designate the site of state archeological landmarks in Texas' submerged lands and remove from the designation certain sites.

(3) The commission shall evaluate lease sales proposed to be conducted in Texas' submerged lands by the School Land Board and may recommend developmental restrictions to be applied to each designated tract which will be published in the Notice for Bids booklet which is distributed by the General Land Office 30 days before each lease sale, and which will forewarn potential lessees of developmental restrictions that apply to the tract.

(4) The commission shall evaluate proposed activities in Texas' submerged lands, and may comment favorably, conditionally, or adversely on applications for permits submitted to the U.S. Army Corps of Engineers, Galveston District, in accordance with applicable rules and orders.

(5) The commission may require persons working in the area of a known shipwreck in Texas' submerged lands to take action approved by the commission to avoid damaging the shipwreck. The commission may require similar action of persons working in an area where there is a likelihood that a shipwreck exists in Texas' submerged lands.

(6) All persons shall conduct their activities in Texas' submerged lands in a manner that will avoid damage to shipwrecks in Texas' submerged lands, and that will protect and preserve the cultural resources of Texas.

§28.4. State Land Tracts Designated by the Commission as Shipwrecks in Texas' Submerged Lands.

(a) The commission has determined there is substantial evidence of the presence of shipwrecks in certain state land tracts of Texas' submerged lands. Such tracts are designated as sensitive tracts by the commission. The list of sensitive tracts is maintained by the Texas General Land Office as part of that agency's Resource Management Code system for state-owned submerged lands and is updated as necessary by the commission. This list is available from the Texas General Land Office, Resource Management Division.

(b) The commission shall take action to determine the site, or probable site, of shipwrecks in Texas' submerged lands within a designated state land tract and remove from the designations certain state land tracts in which there has been a determination there is not a substantial probability of finding a shipwreck.

(c) The list of sensitive state tracts in state-owned submerged lands is considered only a guide to the probability of the presence or absence of a state archeological landmark or eligible property within a given tract.

(d) If, during the conduct of activities in submerged state land tracts, a person discovers the existence of a shipwreck, the person shall promptly notify the commission of the existence of the historic property and shall conduct the activities in a manner that will avoid damage to the shipwreck.

(e) The commission possesses information related to shipwrecks in Texas' submerged lands. Access to such information, with the exception of the list of sensitive tracts described in subsection (a) of this section, is limited to registered researchers as specified in Chapter 24 of this title. The commission's shipwreck reference file will be available for review by registered researchers at the commission during regular business hours.

(f) Any non-shipwreck historic or prehistoric cultural resources in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state is protected under Chapter 26 of this title.

§28.5. Conduct of Activities.

(a) All persons shall conduct their activities in Texas' submerged lands in a manner designed to avoid damage to shipwrecks in Texas' submerged lands, and to protect and preserve the cultural resources of Texas.

(b) When a person submits an application for a permit from the U.S. Army Corps of Engineers, Galveston District, the person shall describe the proposed activity in sufficient detail to enable the commission to review the U.S. Army Corps of Engineers, Galveston District, public notice publication, and determine if the proposed activity may impact a shipwreck.

(c) If the proposed activity is in an area where a shipwreck is known to exist, or where there is a likelihood that a shipwreck exists, the commission may require a survey, the purpose of which is to locate shipwrecks.

(d) Conduct of such a survey may be recommended by the commission to the U.S. Army Corps of Engineers, Galveston District, and may be required as a condition of issuance of the permit from the U.S. Army Corps of engineers, Galveston District. Such survey must be done under a Texas Antiquities Permit issued by the commission. The Texas Antiquities Permit is issued only to a qualified archeologist and allows the commission to monitor the quality and results of the survey.

(e) The commission has set the following minimum standards for conducting a survey.

(1) Horizontal positioning.

(A) Texas' submerged lands within bays and rivers and within one mile of shore in the Gulf of Mexico. The avoidance margin in this area is 50 meters.

(i) Site-specific activities (drilling site, platform site, localized dredging, etc.). A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning. Survey line spacing will be no greater than 30 meters. The geographical extent of the survey are must be adequate to allow movement of the proposed activity such that it is outside of the avoidance margin of any significant magnetic anomaly or sonar target yet fully within the area surveyed. If avoidance of the anomaly or target is not feasible, further investigation of the anomaly or target will be required as stated in subsections (f) - (h) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(ii) Linear projects (pipelines, dredged channels, buried utility lines, etc.). A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning. Under guidance of the GPS, the survey boat will travel the centerline of the project route and at least one offset line no more than 30 meters each side of the centerline. The number of offset lines required will be determined by the width of the proposed activity corridor, taking into account the construction activities at the margin of the primary activity (e.g. anchor patterns of construction barges along a pipeline route), and by the size of the avoidance margin for this area. If significant magnetic anomalies or sonar targets are recorded, the proposed activity must avoid those anomalies or targets by the avoidance margin. The geographical extent of the survey area, therefore, must be adequate to allow avoidance. If avoidance of the anomaly or target is not feasible, further investigation of the anomaly or target will be required as stated in subsections (f) - (h) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(B) Texas' submerged lands offshore (one mile or more offshore in the Gulf of Mexico). The avoidance margin in this area is 150 meters.

(i) Site-specific activities (drilling site, platform site, localized dredging, etc.). A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning. Survey line spacing will be no greater than 50 meters. The geographical extent of the survey are must be adequate to allow movement of the proposed activity such that it is outside of the avoidance margin of any significant magnetic anomaly or sonar target yet fully within the area surveyed. If avoidance of the anomaly or target is not feasible, further investigation of the anomaly or target will be required as stated in subsections (f) - (h) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(ii) Linear projects (pipelines, dredged channels, buried utility lines, etc.). A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning. Under guidance of the GPS, the survey boat will travel the centerline of the project route and at least one offset line no more than 50 meters each side of the centerline. The number of offset lines required will be determined by the width of the proposed activity corridor, taking into account the construction activities at the margin of the primary activity (e.g. anchor patterns of construction barges along a pipeline route), and by the size of the avoidance margin for this area. If significant magnetic anomalies or sonar targets are recorded, the proposed activity must avoid those anomalies or targets by the avoidance margin. The geographical extent of the survey area, therefore, must be adequate to allow avoidance. If avoidance of the anomaly or target is not feasible, further investigation of the anomaly or target will be required as stated in subsections (f) - (h) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(2) Instrumentation and Survey Procedures. Instrumentation is classified as remote sensing equipment that detects the presence of an object by its inherent physical properties or by signals reflected from the object. The preferred suite of remote sensing equipment includes a marine magnetometer, a high-resolution side-scan sonar, and a recording fathometer.

(A) The magnetometer should be set to detect and record the magnetic environment at a minimum of 1-second intervals and the data should be recorded on computer disc or other appropriate computer media.

(B) The side-scan sonar should use a transceiver designated as a 300 kHz transceiver minimum and should be operated in that range or higher.

(C) The fathometer must be capable of recording bathymetric data either on a paper printout, or, preferably, through digital output to a computer.

(D) The magnetometer, side-scan sonar, and fathometer, to the extent possible, should be interfaced, either directly or through computer files, with the global positioning system receiver to coordinate positions with the remote sensing equipment data.

(3) Variance from the parameters specified in subsection (e)(1) and (2) of this section may be requested from the commission. Such variance must be based on quantifiable factors, e.g. the water is too shallow for effective use of side-scan sonar. Likewise, the commission may modify the parameters for a given survey area based on information held by the commission, e.g. survey line spacing may be decreased in the immediate vicinity of a known state archeological landmark more than one mile offshore in the Gulf of Mexico.

(f) The commission has determined that a person who conducts a survey to determine the possible presence of hazards which would be dangerous to the safety of human life and equipment in the area where the proposed activity will be performed has also conducted a survey to determine the possible existence of shipwrecks in Texas' submerged lands, provided that the data from the survey is reviewed by a qualified archeologist under a permit issued by the commission and that such survey meets the minimum standards specified in this section.

(g) If a person detects a significant anomaly or sonar target as a result of conducting the survey described in this section, the person shall record a specific UTM, Latitude/Longitude, or state plane coordinate position, along with the geodetic datum in which the coordinates were recorded, and either:

(1) Conduct a thorough and good faith effort to search out the object causing the anomaly or sonar target and identify whether the object might possibly be a state archeological landmark or eligible property in Texas' submerged lands. Excavation in order to make an identification at this stage of investigation is prohibited without a permit issued by the commission. Or, the person may:

(2) Relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the anomaly or sonar target and thereby avoid damage to a shipwreck.

(h) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is definitely not a shipwreck, and if the commission concurs with that determination, the person may perform the activity in a normal, routine manner.

(i) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is a shipwreck or might be a shipwreck, the person shall either:

(1) Notify the commission of the possible existence of a shipwreck or possible shipwreck, report the coordinate position to the commission and relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the significant anomaly or sonar target and thereby avoid damage to a shipwreck; or

(2) Notify the commission of the possible existence of a shipwreck or possible shipwreck and report the coordinate position to the commission; whereupon the commission can perform its activities

described in Subchapter C, Powers and Duties, and Subchapter E, Prohibitions, of the Antiquities Code of Texas. The commission may require additional archeological investigations of the shipwreck or possible shipwreck, or, if the commission concurs that no damage will occur to the shipwreck from the proposed activity, the commission may authorize the person to proceed with the proposed activity in a normal, routine manner.

§28.6. Remote Sensing Survey for Pure Research Purposes.

A person may conduct a survey for the sole purpose of pure historical or archeological research on shipwrecks and not for review and compliance clearance. Such pure research surveys must be conducted under a Texas Antiquities Permit issued to a qualified archeologist by the commission. The minimum standards for conducting such a survey may vary from those set forth in §28.5(e) of this chapter.

§28.7. Activities Conducted on Shipwrecks beyond the Survey Level.

Any activity conducted on a shipwreck beyond that authorized under the survey permit issued by the commission must be authorized under a separate permit issued by the commission specifically for that activity as discussed under §26.20 of this title.

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 31, 2002.

TRD-200207138
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-5711

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.6, §319.16

The Texas Racing Commission proposes new §319.16 and an amendment to §319.6, relating to postmortem examinations and access to the pre-race and test areas, in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes continue to exist.

The substance of new §319.16 is currently in the Commission's rules at §319.108. The rule is being moved to Subchapter A to make the provisions apply to greyhounds as well as horses. The amendment to §319.6 eliminates the prohibition against entering a stall in the test barn or pre-race holding area, and rewords the prohibition against unauthorized people or animals having access to the pre-race or test areas.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the new section and amendment are in effect there will be no fiscal implications for state or local government as a result of enforcing the new section or amendment.

Ms. Flowerday has also determined that for each of the first five years the new section and amendment are in effect the anticipated public benefit will be that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There are no fiscal implications for small or micro-businesses. New §319.16 authorizes the commission veterinarian to order a postmortem examination on a race animal that dies on the racetrack. The cost associated with the postmortem examination must be borne by the owner of the race animal and will vary depending on many factors, such as whether the animal was euthanized and the number of tests that are conducted on the animal. The cost of a postmortem examination for a greyhound can range from $100 to $250; the cost of a postmortem examination for a horse can range from $140 to $570. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before January 3, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The new section and amendment are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The proposed new section and amendment implement Texas Civil Statutes, Article 179e.

§319.6. Access to Pre-race and Test Areas Restricted.

[~~(a)~~] To ensure the safety and security of the race animals, an individual or race animal may not enter [~~The commission veterinarian shall exclude from~~] the pre-race area, the lockout kennel, or [~~and~~] the test areas unless:

(1) the race animal is [~~all race animals who are not~~] participating in a race, being schooled, or being tested; or [~~and~~]

(2) the individual is [~~all persons who are not~~] required for the attendance of a race animal [~~the race animals~~].

[~~(b) Except on authorization by the commission veterinarian or the custodian of the area, a person may not enter a stall in which a horse is housed in the pre-race holding area or in the test barn.~~]

§319.16. Postmortem Examination.

(a) The commission veterinarian may order a postmortem examination on any race animal that, while on an association's grounds, dies or suffers an injury in training or in competition and is subsequently euthanized. The examination shall be conducted at a time and place acceptable to the commission veterinarian and to the extent reasonably necessary to determine the injury or sickness that resulted in the death or euthanasia of the race animal.

(b) An examination required by this section must be conducted by a veterinarian licensed by the Commission on the authority of the commission veterinarian or at a qualified laboratory approved by the commission veterinarian. The commission veterinarian shall either witness the examination or designate another person to witness the examination.

(c) Specimens may be obtained from a race animal for which a postmortem examination has been ordered and may be delivered for testing to an approved laboratory in accordance with Subchapter D of this chapter (relating to Drug Testing). When practical, specimens should be procured before euthanasia.

(d) Specimens may be obtained from a race animal that was euthanized but for which no postmortem examination was ordered and may be delivered for testing to an approved laboratory in accordance with Subchapter D of this chapter.

(e) The owner of a deceased race animal shall pay any charges due the veterinarian or laboratory which conducts the postmortem examination or subsequent laboratory tests.

(f) Not later than 72 hours after a postmortem examination, the person who conducted the examination shall file a report of the examination with the commission veterinarian on a form prescribed by the executive secretary.

(g) An owner or trainer who fails to comply with this section is subject to disciplinary action by the executive secretary.

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 30, 2002.

TRD-200207122
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

SUBCHAPTER B. TREATMENT OF HORSES

The Texas Racing Commission proposes an amendment to §319.102 and the repeal of §319.108, relating to the veterinarian's list for horses and postmortem examinations, in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes continue to exist.

The amendment to §319.102 conforms the rule to current Commission rule style and with current practice regarding the posting of the veterinarian's list. The substance of §319.108 is being moved to Subchapter A of this chapter to make its provisions applicable both to greyhounds and horses. Therefore, §319.108 is proposed for repeal.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment and repeal.

Ms. Flowerday has also determined that for each of the first five years the amendment and repeal are in effect the anticipated public benefit will be that the Commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment or repeal as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before January 3, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

16 TAC §319.102

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.102. Veterinarian's List.

(a) The commission veterinarian shall maintain a veterinarians' list of the horses that are ineligible to start in a race due to physical distress, unsoundness, or infirmity. The test barn supervisor [~~commission veterinarian~~] shall ensure that a current version of the veterinarian's list is posted daily [~~in the commission veterinarian's office and~~] in the racing office.

(b) On a form prescribed by the executive secretary [~~commission~~], the commission veterinarian shall notify the racing secretary and the trainer of a horse placed on the veterinarian's list as soon as practical after placing the horse on the list.

(c) A horse that is placed on the veterinarian's list may not be removed from the list before the fourth day after the date the horse is placed on the list. A horse may be removed from the veterinarian's list only on demonstrating to the commission veterinarian that the horse is raceably sound and in fit physical condition to exert its best effort in a race.

(d) Before removing a horse from the veterinarian's list, the commission veterinarian may require the horse to perform satisfactorily in a workout [~~work-out~~] or qualifying race. Performance in such a workout [~~work-out~~] or qualifying race must be conducted in accordance with §319.3 of this title (relating to Medication Restricted). The commission veterinarian may require the collection of test specimens from a horse after a workout [~~work-out~~] or race required under this subsection. If a specimen is collected under this subsection, the commission veterinarian may not remove the horse from the veterinarian's list until the results of the test are negative.

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 30, 2002.

TRD-200207124
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

16 TAC §319.108

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

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The proposed repeal implements Texas Civil Statutes, Article 179e.

§319.108. Postmortem Examination.

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 30, 2002.

TRD-200207125
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

SUBCHAPTER C. TREATMENT OF GREYHOUNDS

16 TAC §319.202

The Texas Racing Commission proposes an amendment to §319.202, relating to the veterinarian's list for greyhounds, in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the proposed changes continue to exist.

The amendment to §319.202 conforms the rule to current Commission rule style which authorizes the executive secretary, rather than the Commission, to prescribe various forms.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's veterinary regulatory program will function efficiently and effectively. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before January 3, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.202. Veterinarian's List.

(a) - (e) (No change.)

(f) A trainer shall submit to the commission veterinarian, on a form prescribed by the executive secretary [~~commission~~], documentation of any racing-related injury sustained by a greyhound in the trainer's care.

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 30, 2002.

TRD-200207126
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

SUBCHAPTER D. DRUG TESTING
DIVISION 1. GENERAL PROVISIONS

16 TAC §319.303

The Texas Racing Commission proposes an amendment to §319.303, relating to tampering with specimens, in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the proposed changes continue to exist.

The amendment to §319.303 authorizes the executive secretary, rather than the Commission, to approve the addition of a substance to a specimen for the purpose of preserving the specimen.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's race animal drug testing program will function efficiently and effectively. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before January 3, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.303. Tampering with Specimen.

(a) (No change.)

(b) This section does not apply to a person who adds a substance approved by the executive secretary [~~commission~~] necessary to preserve the specimen for analysis.

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 30, 2002.

TRD-200207127
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

DIVISION 2. TESTING PROCEDURES

16 TAC §§319.332 - 319.334, 319.338

The Texas Racing Commission proposes amendments to §§319.332 - 319.334 and §319.338, relating to testing procedures, in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes continue to exist.

The amendments conform the rules to the Commission's current capitalization style. The amendments also conform the rules to current practice, regarding the authority of the test barn supervisor at horse racetracks to oversee the collection, sealing, and storage of specimens. The amendment to §319.332 also clarifies the right of the owner, trainer, or kennel owner to witness the taking of a specimen.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the amendments.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the anticipated public benefit will be that the Commission's race animal drug testing program will function efficiently and effectively. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before January 3, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§319.332. Procedure for Obtaining Specimens.

(a) The commission veterinarian at greyhound racetracks and the test barn supervisor at horse racetracks shall select and directly supervise the test technicians who obtain [~~persons and procedures for obtaining~~] specimens for conducting tests under this chapter. The rate of compensation [~~The individuals hired by the association to be test barn technicians and the compensation~~] to be paid to the technicians is [~~are~~] subject to the approval of the executive secretary [~~commission veterinarian~~].

(b) Except as authorized by the commission veterinarian, each specimen must be obtained in the test area approved by the Commission [~~commission~~].

(c) The owner, trainer, or kennel owner of a race animal being tested or a designee of the owner, trainer, or kennel owner is entitled to [~~shall~~] witness or acknowledge the taking of the specimen and is entitled to [~~shall~~] sign the tag for the specimen. Failure or refusal to be present and witness the collection of the specimen or to sign the specimen tag constitutes a waiver by the owner, trainer, or kennel owner of any objections to the source, collection procedures, and documentation of the specimen. A person signing a specimen tag under this section must be at least 18 years of age and be licensed by the Commission [~~commission~~]. A trainer or kennel owner may not designate another

trainer or kennel owner to witness the collection of the sample or to sign a specimen tag unless a trainer responsibility form has been executed.

§319.333. Specimen Tags.

(a) Each specimen obtained for testing must be marked for identification with a tag with multiple parts[~~, as required by the commission~~]. A part of the tag must accompany the specimen to the testing laboratory and the commission veterinarian or test barn supervisor shall retain a part of the tag in a locked cabinet in the test barn or test area [~~veterinarian's office~~].

(b) The part of the tag that is sent with the specimen to the laboratory may contain only the date the specimen was obtained and a unique identification number assigned by the executive secretary [~~commission veterinarian~~]. The part of the tag that is retained in the test barn or test area [~~by the commission veterinarian~~] must contain:

(1) the signature of the commission veterinarian or test barn supervisor;

(2) [~~(1)~~] the initials of each individual who collected the urine or serum [~~the commission veterinarian or a designee of the veterinarian~~];

(3) the initials of the individual who processed the serum for split sampling;

(4) [~~(2)~~] the date the specimen was obtained;

(5) [~~(3)~~] the unique identification number;

(6) [~~(4)~~] the name of the race animal;

(7) [~~(5)~~] the signature of the witness, if any; and

(8) [~~(6)~~] any other information required by the executive secretary [~~commission~~].

§319.334. Delivery and Retention of Specimens

The commission veterinarian or test barn supervisor shall ensure that a specimen that is to be sent to a testing laboratory is delivered to the laboratory in a timely manner and by a method that ensures the integrity of the specimen. The courier service to be used by an association and the contract with that courier service is subject to the approval of the executive secretary.

§319.338. Storage of Splits

(a) The commission veterinarian shall store the retained part of a specimen at a site approved by the executive secretary [~~Commission~~] for the period required by this section. The split specimen shall be stored in a manner that ensures the safety and integrity of the part.

(b) If the result of the initial test on a specimen is negative, the commission veterinarian's designee [~~veterinarian~~] may discard the retained part of the specimen on receipt of the negative result. If the result of the initial test on a specimen is positive, the commission veterinarian's designee [~~veterinarian~~] may discard the split specimen of the specimen after all appeals are exhausted and the disposition of the matter is final.

(c) (No change.)

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

Filed with the Office of the Secretary of State on October 30, 2002.

TRD-200207128
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 833-6699

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.436

The State Board for Educator Certification (SBEC) proposes an amendment to 19 TAC §230.436, relating to the agency's schedule of fees for certification services. The proposed amendment to §230.436 would reduce by $20, from $75 to $55, the fee a school district must pay to have SBEC issue an emergency permit to employ a person who is not appropriately certified for a teaching assignment. The decreased fee would apply only to permits requested by school districts using the new web-based system beginning with the 2002 - 2003 school year.

School districts apply to SBEC for emergency permits to employ or to assign teachers who are not appropriately certified. SBEC has replaced the current permit application process with a new, more efficient web-based system to be used to process emergency permits, nonrenewable permits, and temporary exemption permits. Some cost savings related to permit processing have been realized since implementation of the system on September 1, 2002.

Section 230.436 was previously amended on an emergency basis in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7677). Section 230.436 is currently proposed so the amendment will become permanent.

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined that, for the first five-year period the rules are in effect, the proposed fee reduction would annually return an estimated total of $240,000 to $300,000 to school districts statewide in reduced permit costs during this period.

Dan Junell, General Counsel, State Board for Educator Certification, has determined that, for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be decreased administrative costs, which school districts could use to enhance professional development for emergency permit holders or to help defray the cost of other school services. There will be no effect to small or micro businesses.

In accordance with §2001.022, Government Code, SBEC has determined that the adopted rule will not impact local economies and, therefore, has not filed a request for a local employment impact statement with the Texas Workforce Commission.

If adopted, the proposed rule would be a governmental action regulating a permit fee paid by a public school to SBEC, in accordance with Chapter 21, Subchapter B, Education Code, and therefore would not affect private real property under the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendment may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 4616 West Howard Lane, Suite 120, Austin, Texas 78728, or by e-mail at "djunell@sbec.state.tx.us."

The amendment is proposed under the statutory authority of §21.041(c), Education Code, which provides that SBEC shall propose rules adopting a fee for the issuance and maintenance of an educator certificate, including an emergency permit, that is adequate to cover the costs of administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter.

No other statutes, articles or codes are affected by the proposed amendment.

§230.436. Schedule of Fees for Certification Services.

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

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

(8) Initial permit, reassignment on permit with a change in assignment or school district, renewal is for nonconsecutive years, or renewal of permit on a hardship basis (nonrefundable)--$55 [$75].

(9) (No change.)

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

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

TRD-200207174
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 469-3011

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.18

The Board of Nurse Examiners proposes an amendment to 22 TAC §217.18, concerning Registered Nurse First Assistants. The Board met on October 24, 2002, and approved to adopt on a permanent and an emergency basis an amendment to §217.18 that addresses the minimum requirements for registered nurses functioning as first assistants in surgical settings. The emergency amendment which mirrors this proposed amendment was submitted on October 28, 2002, and became effective upon filing. The nursing community has reported that a significant number of RNs first assisting exist who do not meet the criteria of current §217.18.

House Bill 803, passed in the 77th Legislative Session, amended the Nursing Practice Act by adding §301.1525. The section defines a "nurse first assistant" as a registered nurse who is certified in perioperative nursing by an organization recognized by the Board and has completed a nurse first assistant program approved by an organization recognized by the Board. The new section grants the Board authority to develop rules relating to RNFAs, and current §217.18 was subsequently adopted in March 2002.

In the past, the Board determined that RN first assisting is within the scope of practice of the registered nurse (adopted at January 1995 Board meeting). It was determined that RNs who elect to function in such a role should meet the requirements that are outlined in the Association of Perioperative Registered Nurses' (AORN's) position statement relating to RNFAs. The position statement and other RNFA information can be located at www.aorn.org/clinical/rnfainfo.htm. Since the adoption of §217.18, however, staff has received numerous phone calls from interested parties regarding the content of the rule. Many of the calls are from registered nurses who do not meet the educational and/or certification requirements specified in the Nursing Practice Act and reiterated in the rule. Board staff further discussed the issue and maintained the interpretation that §301.1525 and §217.18 apply to all RNs who elect to function as first assistants. Nothing in the language implies the restriction of its application to the use of the RNFA title or to reimbursement. The Board has maintained that the current statute and rule are consistent with the educational and certification requirements in its previous position on the issue of first assisting which was adopted in January 1995 and in the interpretive statement adopted by the Board in July 2002.

The Texas Nurses Association, Texas Hospital Association, Texas Council of Perioperative RNs, and Texas RNFA Network have jointly requested that the Board suspend its previously held policy and delay implementation of the requirements for those RNs who meet certain defined criteria. They expressed concern that RNs who were first assisting without having met the requirements stated in the Board's previous position statement would be replaced by individuals who are potentially less qualified and requested the Board adopt an alternate set of requirements that must be met by those RNs who are safe practitioners but who do not currently meet the criteria as specified in §301.1525 of the Nursing Practice Act and §217.18. These alternate criteria would permit these RNs to continue to first assist until January 1, 2005. After that date, all RNs who elect to first assist must meet the criteria specified in the Nursing Practice Act.

Kathy Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is effective there will be some fiscal implications for state or local government as a result of enforcing or administering the rule. The magnitude of those fiscal implications are not known. It is anticipated that administrative costs associated with the obligation for Board staff review and registry of RNFAs pursuant to §301.1525 will exist.

Ms. Thomas has determined that the public benefit for the first five-year period of amending the rule is providing an extension of time to allow RNs to meet the requirements imposed by the current rule and, therefore, avoiding the removal of RNs from the operating room setting. There is no anticipated cost to small

businesses. It is anticipated that, in the future, a fee will be imposed on those RNFAs required to comply with this rule as proposed to cover administrative costs.

Comments on the proposed amendment may be submitted in writing to Kathy Thomas, Executive Director, Board of Nurse Examiners for the State of Texas, 333 Guadalupe, Suite 3-460, Austin, Texas 78701. Comments will be accepted and considered for 30 days following the publication of this proposal in the *Texas Register*.

The amendment is proposed under the authority of Texas Occupations Code §301.151 and §301.1525 that authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses seeking approval of RNFAs.

The proposed amendment affects the Nursing Practice Act, Texas Occupations Code §301.1525.

§217.18. Registered Nurse First Assistants.

(a) Qualifications for registered nurse first assistants (RNFAs):

(1) [~~(a)~~] A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall submit an application for registration and all applicable fees to the Board and shall submit evidence including, but not limited to, the following:

(A) [~~(1)~~] Current licensure as a registered nurse in the State of Texas or reside in any party state and hold a current, valid registered nurse license in that state;

(B) [~~(2)~~] Current [~~has a current~~] national certification (CNOR) in perioperative nursing; and

(C) [~~(3)~~] Completion of [~~has completed~~] a nurse first assistant educational program approved by an organization recognized by the Board; or

(D) [~~(4)~~] Current [~~has a current~~] certification as a registered nurse first assistant (CRNFA) by a national certifying body recognized by the Board.

(2) [~~(b)~~] After review by the Board, notification of registration shall be mailed to the RNFA informing him/her that the registration process has been completed.

(3) [~~(c)~~] The registered nurse whose functions include acting as a first assistant in surgery shall know and conform to the Texas Nursing Practice Act; current Board rules, regulations, and standards of professional nursing; and all federal, state and local laws, rules, and regulations affecting the RNFA specialty area. When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse.

(4) [~~(d)~~] A registered nurse functioning as a first assistant in surgery shall comply with the standards set forth by the AORN.

(b) A registered nurse not qualifying under subsection (a) of this section may first assist until January 1, 2005 if he/she:

(1) Has current licensure as a registered nurse in the State of Texas or resides in any party state and holds a current, valid registered nurse license in that state;

(2) Was actively engaged in first assisting as of March 1, 2002;

(3) Does not use any titles to imply that the person is a nurse first assistant or otherwise hold him/herself out as a nurse first assistant;

(4) Has operating room experience that meets the following criteria:

(A) CNOR eligible (meets qualifications to apply and sit for the national certification examination in perioperative nursing (CNOR) and

(B) One year or 500 hours of experience first assisting as of March 1, 2002; and

(5) Complies with BNE Standards of Professional Nursing Practice §217.11(12) of this title requiring RNs to accept only assignments that take into consideration patient safety and that are commensurate with the RN's educational preparation, experience, knowledge and physical and emotional ability;

(c) Effective January 1, 2005, the exceptions outlined in subsection (b) of this section no longer apply, and any registered nurse first assisting must meet the requirements outlined in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on October 30, 2002.

TRD-200207118
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 305-6823

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in the year 2003. The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 2003 on the basis of gross premium receipts for calendar year 2002 or on some other designated basis. Section 1.414 sets rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $48,617,700 to the state's general revenue fund. There will be

no fiscal implications for local government as a result of enforcing or administering the proposed amended section, and there will be no effect on local employment or local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. The cost in 2003 to an insurer receiving premiums in 2002 for motor vehicle insurance will be .053 of 1% of those gross premiums; for casualty insurance, fidelity, guaranty and surety bonds, .180 of 1% of those gross premiums; for fire insurance and allied lines, including inland marine, .330 of 1% of those gross premiums; for workers' compensation insurance, .051 of 1% of those gross premiums; and for title insurance, .073 of 1% of those gross premiums. The cost in 2003 for an insurer receiving premiums in 2002 for life, health, and accident insurance, will be .040 of 1% of those gross premiums. In 2003, a health maintenance organization will pay $.44 per enrollee if it is a single service health maintenance organization or a limited service health maintenance organization, and $1.32 per enrollee if it is a multi-service health maintenance organization. In 2003, a third party administrator will pay .265 of 1% of its correctly reported gross amount of administrative or service fees received in 2002. In 2003, for a corporation issuing prepaid legal service contracts, the cost will be .022 of 1% of correctly reported gross revenues for 2002. There will be no difference in rates of assessment between micro, small and large businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The actual amount of time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must submitted no later than 5:00 p.m. on December 16, 2002, to Gene C. Jarmon, Acting 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 should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 23.08A, and 20A.33 and §36.001. These articles provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6 §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, Section 33 (Article 20A.33), establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Section 36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 21.46, 21.54, 23.08A, and the Texas Health Maintenance Organization Act, §33, (Article 20A.33).

§1.414. Assessment of Maintenance Taxes and Fees, 2003 [~~2002~~].

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 2002 [~~2001~~] for the lines of insurance specified in paragraphs (1) - (5) of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code Article 5.12, the rate is .053 [~~.060~~] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code Article 5.24, the rate is .180 [~~.210~~] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code Article 5.49, the rate is .330 [~~.401~~] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code[~~,~~] Article 5.68, the rate is .051 [~~.069~~] of 1.0%;

(5) for title insurance, pursuant to the Insurance Code Article 9.46, the rate is .073 [~~.111~~] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2002 [~~2001~~] for life, health, and accident insurance, pursuant to the Insurance Code Article 4.17, is .040 of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 2002 [~~2001~~] for the following entities:

(1) pursuant to the Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code Article 20A.33), the rate is $.44 [~~$.37~~] per enrollee for single service health maintenance organizations, $1.32 [~~$1.10~~] per enrollee for multi-service health maintenance organizations and $.44 [~~$.37~~] per enrollee for limited service health maintenance organizations;

(2) pursuant to the Insurance Code Article 21.07-6, §21, the rate is .265 [~~.330~~] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code Article 23.08A, the rate is .022 [~~.03~~] of 1.0% of correctly reported gross revenues for corporations issuing prepaid legal service contracts.

(d) The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, TX 78774-0100 on March 1, 2003 [~~2002~~].

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

Filed with the Office of the Secretary of State on October 31, 2002.

TRD-200207140
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-6327

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER GG. MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP ACCIDENT AND HEALTH INSURANCE

28 TAC §§3.7003, 3.7004, 3.7006, 3.7007

The Texas Department of Insurance proposes amendments to §§3.7003, 3.7004, 3.7006 and 3.7007, concerning minimum reserve standards for individual and group accident and health insurance. The amendments are necessary to comply with Insurance Code Article 21.39 which directs the Commissioner of Insurance to adopt each current formula for establishing reserves applicable to each line of insurance recommended by the National Association of Insurance Commissioners (NAIC). Subchapter GG is the department's adaptation of the NAIC model regulation for minimum reserve standards for individual and group accident and health insurance. The NAIC has amended the model regulation, and these proposed amendments will harmonize Subchapter GG with the amended model regulation. The proposed amendments clarify the minimum amount for unearned premium and contract reserves by amending §3.7003(b)(2); require long-term care contract reserves to be calculated on the one year full preliminary term method and allow a rating block approach to be used when determining contract reserves for individual and group contracts by amending §3.7004; add a table containing adjusted claim termination rates and the 1983 Group Annuity Mortality Table without projection for the mortality basis for long-term care insurance individual policies or group certificates by amending §3.7006; delete subsection (d) in §3.7006 concerning availability of tables since it is obsolete as a result of the availability of the tables on the internet; and add two new definitions to §3.7007.

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

Ms. Patterson has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the amendments will be improved standards for reserves for individual and group accident and health insurance contracts which will enhance the solvency of insurers writing the affected lines of accident and health insurance. Since the sections are required by statute, the cost of compliance is attributable to the statute and not the sections. Costs will be incurred in the first year to change the accounting systems to calculate the new reserve requirements. Costs will also be incurred in those cases where the proposed sections will require an increase in reserves. In the first year, the probable economic cost to insurers required to comply with the proposed sections will be a result of programming and accounting changes. The department estimates that insurers required to comply with the proposed sections will incur expenses for 100 to 200 hours of programming and accounting costs depending on the type of products offered and volume of business. On average, compensation to perform these tasks will range from $30 to $70 an hour, based on the department's experience. At the low end of the range, an insurer would use in-house staff to perform the programming changes. At the high-end of the range an insurer would hire a consultant to perform the programming changes. No additional programming and accounting costs should be incurred beyond the first year. For insurers with long-term care business, the proposed sections will require increased reserves. The increase in reserves is anticipated to be zero in the first year and, depending on the valuation interest rate, approximately twelve percent at durations two through five and diminishing to lesser percentages thereafter. For companies that already follow the NAIC Accounting Practices and Procedures Manual, the greater consistency in reserving requirements for products offered in multiple states may actually result in a decrease in cost. For small and micro businesses required to comply with the proposed sections, the costs are expected to be the same as those for other companies, although fewer hours of programming and accounting costs are likely since they typically offer fewer products than larger companies. The department finds it neither legal nor feasible to reduce the effect of the proposed sections on micro or small insurers since the standards established by Subchapter GG of this title are minimum standards necessary to assure solvency of the affected insurers.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 16, 2002 to Gene C. Jarmon, Acting General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code Articles 21.39, 10.07, 18.08, 19.06 and 22.18, and §36.001. Article 21.39 requires the Commissioner of Insurance to adopt the current formula for establishing reserves applicable to each line of insurance as recommended by the National Association of Insurance Commissioners. Articles 10.07, 18.08, 19.06 and 22.18

apply the requirements of Article 21.39 to certain types of insurers. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

The following articles are affected by this proposal: Article 21.39

§3.7003. Premium Reserves.

(a) (No change.)

(b) Minimum standards for unearned premium reserves.

(1) The minimum unearned premium reserve with respect to any contract is an amount which is not in excess of the amount or inconsistent with the methods established by the Insurance Code, Article 6.01. The minimum standard shall be the pro rata unearned modal premium that applies to the premium period beyond the valuation date, with such premium determined on the basis of:

(A) the valuation net modal premium on the contract reserve basis applying to the contract; or

(B) the gross modal premium for the contract if no contract reserve applies.

(2) However, in no event may the sum of the unearned premium and contract reserves for all contracts of the insurer subject to contract reserve requirements be less than the gross modal unearned premium reserve on all such contracts, as of the date of valuation. The reserve shall never be less than the expected claims for the period beyond the valuation date represented by the unearned premium reserve to the extent not provided for elsewhere.

(c) (No change.)

§3.7004. Contract Reserves.

(a) General.

(1) Contract reserves are required, unless otherwise specified in paragraph (2) of this subsection, for:

(A) all individual and group contracts [~~guaranteed renewable coverages, non-cancellable coverages with guaranteed rates, long-term care coverages, and disability income coverages~~] with which level premiums are used; or

(B) all individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. This evaluation may be applied on a rating block basis if the total premiums for the block were developed to support the total risk assumed and expected expenses for the block each year, and a qualified actuary certifies the premium development. The values specified in this subparagraph must be determined on the basis specified in subsection (b) of this section.

(2) Contracts not requiring a contract reserve are as follows:

(A) contracts which cannot be continued after one year from issue; or

(B) contracts where each year's premium is priced to cover that year's cost without any prefunding. This evaluation may be applied on a rating block basis if the total premiums for the block were developed to support the total risk assumed and expected expenses for the block each year. For either a contract specific or rating block basis, the actuary must certify the premium development and should state in the certification that premiums were developed such that each year's premium was intended to cover that year's costs without any prefunding. [~~contracts already in force on the effective date of these standards for which no contract reserve was required under the immediately preceding standards; or~~]

[~~(C) contracts which are not priced to provide for claims to be incurred in future years and which allow the insurer to increase premium rates in future years.~~]

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

(b) Minimum standards for contract reserves.

(1) Basis.

(A) Morbidity or other contingency. Minimum standards with respect to morbidity are those set forth in §3.7006 of this title (relating to Specific Standards for Morbidity, Interest, and Mortality).

(i) Valuation net premiums used under each contract must have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration, and period for which gross premiums have been calculated.

(ii) Contracts for which tabular morbidity standards are not specified in §3.7006 of this title shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the commissioner. The morbidity tables shall contain a pattern of incurred claims cost that reflects the underlying morbidity and shall not be constructed for the primary purpose of minimizing reserves.

(B) (No change.)

(C) Termination rates. Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in §3.7006 of this title (relating for Specific Standards for Morbidity, Interest, and Mortality) except as noted in this subparagraph.

(i) Under contracts for which premium rates are not guaranteed, and where the effects of insurer underwriting are specifically used by policy duration in the valuation morbidity standard or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of: 80% of the total termination rate used in the calculation of the gross premiums, or 8.0%.

(ii) For long-term care individual policies or group certificates issued after December 31, 2002, the contract reserve may be established on a basis of separate mortality as specified in §3.7006 of this title and terminations other than mortality, where the terminations are not to exceed:

(I) For policy years one through four, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums or 8%;

(II) For policy years five and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums or 4%;

(iii) Where a morbidity standard specified in §3.7006 of this title is on an aggregate basis, such morbidity standard may be adjusted to reflect the effect of insurer underwriting by policy duration. The adjustments must be appropriate to the underwriting and be acceptable to the commissioner.

(D) Reserve method.

(i) For insurance, except long-term care and return of premium or other deferred cash benefits issued after December 31, 2002, the [~~The~~] minimum reserve is the reserve calculated on the two-

year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.

(ii) For long-term care insurance issued after December 31, 2002, the minimum reserve is the reserve calculated on the one-year full preliminary term method.

(iii) For return of premium or other deferred cash benefits issued after December 31, 2002, the minimum reserve is the reserve calculated as follows:

(I) on the one year preliminary term method if the benefits are provided at any time before the twentieth anniversary

(II) on the two year preliminary term method if the benefits are only provided on or after the twentieth anniversary.

(iv) The preliminary term method may be applied only in relation to the date of issue of a contract or a rider. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions (e.g., projected inflation rates) or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.

(E) (No change.)

(F) Nonforfeiture Benefits for Long-term Care Insurance. The contract reserve on a policy basis shall not be less than the net single premium for the nonforfeiture benefits at the appropriate policy duration, where the net single premium is computed according to subparagraph (D) of this paragraph.

(c) - (d) (No change.)

§3.7006. Specific Standards for Morbidity, Interest, and Mortality.

(a) Morbidity.

(1) Minimum morbidity standards for valuation of specified individual contract health insurance benefits are as follows.

(A) Disability income benefits due to accident or sickness.

(i) Contract reserves.

(I) Contracts issued on or after January 1, 1965, and prior to January 1, 1987: the 1964 Commissioners Disability Table (64 CDT). The 1964 Commissioners Disability Table (64 CDT) is adopted by reference for use in the manner indicated in these sections.

(II) Contracts issued on or after January 1, 1994: the 1985 Commissioners Individual Disability Tables A (85CIDA); or the 1985 Commissioners Individual Disability Tables B (85CIDB). The 1985 Commissioners Individual Disability Tables A (85CIDA) and the 1985 Commissioners Individual Disability Tables B (85CIDB) are adopted by reference for use in the manner indicated in these sections.

(III) Contracts issued during the years 1987 through 1993: optional use of either the 1964 table or the 1985 tables.

(IV) Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A (85CIDA) or Tables B (85CIDB) as the minimum standard. The insurer may, however, elect to use the other tables with respect to any subsequent statement year.

(ii) Claim reserves.

(I) For claims incurred after December 31, 2002, the 1985 Commissioners Individual Disability Tables A (85CIDA) with claim termination rates multiplied by the following adjustment factors: Figure: 28 TAC §3.7006(a)(1)(A)(ii)(I)

(II) For claims incurred on or before December 31, 2002, each insurer may elect to use item (-a-) or (-b-) of this subclause as the minimum standard for claims incurred on or before December 31, 2002.

(-a-) The minimum morbidity standard in effect for the contract reserves on currently issued contracts, as of the date the claim is incurred, or[.]

(-b-) The standard as defined in clause (i) of this subparagraph, applied to all open claims. Once an insurer elects to calculate reserves for all open claims on the standard defined in clause (i) of this subparagraph, all future valuations must be on that basis.

(B) - (E) (No change.)

(2) (No change.)

(b) Interest.

(1) (No change.)

(2) For claim reserves on policies that require contract reserves[, except for disability income benefits in policies not requiring contract reserves], the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the claim incurral date. For claim reserves on [disability income benefits in] policies not requiring contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of single premium immediate annuities issued on the same date as the claim incurral date, reduced by one percentage point.

(c) Mortality.

(1) Except as provided in paragraphs [paragraph] (2) and (3) of this subsection, the mortality basis used must be according to a table (but without use of selection factors) permitted by law for the valuation of whole life insurance issued on the same date as the health insurance contract.

(2) (No change.)

(3) For long-term care insurance individual policies or group certificates the mortality basis used shall be the 1983 Group Annuity Mortality Table without projection.

[(d) Tables. Copies of the 1964 Disability Table (64 CDT); the 1985 Commissioners Individual Disability Tables A (85CIDA); the 1985 Commissioners Individual Disability Tables B (85CIDB); the 1956 Intercompany Hospital-Surgical Tables; the 1974 Medical Expense Tables, Table A; the 1985 NAIC Cancer Claim Cost Tables; the 1959 Accidental Death Benefits Table; and the 1987 Commissioners Group Disability Income Table (87CGDT) may be obtained by contacting the Actuarial Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 304-3A, Austin, Texas 78714-9104.]

§3.7007. Glossary of Technical Terms Used.

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

(1) - (19) (No change.)

(20) Level premium--The premium calculated to remain unchanged throughout either the lifetime of the policy or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it was calculated to remain level, it may be changed if any of the assumptions on which it is based are revised at a later time. Generally, the annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In

this case the benefit portion of the premium is more than needed to provide for the costs of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.

(21) Rating block--A grouping of contracts determined by the valuation actuary based on common characteristics, such as policy form or forms having similar benefit designs.

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 November 4, 2002.

TRD-200207166
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-6327

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1012

The Texas Department of Insurance proposes an amendment to §7.1012, concerning assessments to cover the expenses of examining insurance companies. The amendment is necessary to adjust the rates of assessment to be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2002 calendar year, and from each foreign insurance company examined during the 2003 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed amended section will be in addition to, and not in lieu of any other charge which may be made under law, including the Insurance Code article 1.16.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $9,791,542 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 2003 calendar year. Ms. Phillips has determined that the direct economic cost to individuals who are required to comply with the proposed section will vary. In the case of domestic companies, the amount of the assessment in 2003 will be .00503 of 1.0% of the domestic company's admitted assets as of December 31, 2002 (excluding pension assets specified in subsection (b)(2)(A)) and .01190 of 1.0% of a domestic company's gross premium receipts for 2002 (excluding pension related premiums specified in subsection (b)(2)(B) and premiums related to welfare benefits described in subsection (b)(3)). In the case of foreign companies examined in 2003, the amount of the assessment in 2003 will be 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. There will be no difference in rates of assessments between micro, small and large businesses, except that a minimum charge of $25 is assessed domestic companies in §7.1012(b)(3). The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 16, 2002, to Gene C. Jarmon, Acting 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 should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code article 1.16 and §36.001. The Insurance Code article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Section 36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 1.28, 4.10 and 4.11.

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 2003 [~~2002~~].

(a) Foreign insurance companies examined during the 2003 [~~2002~~] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code Article 1.16. Each foreign insurance company examined shall pay 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation

and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2003 [2002]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00503 [.00577] of 1.0% of the admitted assets of the company as of December 31, 2002 [2001], upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .01190 [.01383] of 1.0% of the gross premium receipts of the company for the year 2002 [2001], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Texas Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §301 et seq.)

(c) The overhead assessment assessed under subsections (b)(2) and (b)(3) of this section shall be payable and due to the Texas Department of Insurance, P.O.Box 149104, MC 108-3A, Austin, Texas 78714-9104 on December 31, 2003.

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 31, 2002.

TRD-200207141
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88, concerning an assessment which will be used to cover the general administrative expense of insurance premium finance companies. The amendment is necessary to adjust the rate of assessment so there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigation, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's 2003 fiscal year's general administrative expense and collects the assessment from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 2002 calendar year.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government will be income estimated at $201, 549 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposed section.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a minimum assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost of the assessment to a premium finance company in 2003 will be .00787 of 1.0% of calendar year 2002 total loan dollar volume of the insurance premium finance company. The minimum cost for compliance based on assessment under the section is $250. There will be no difference in rates of assessment between micro, small and large businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 16, 2002, to Gene C. Jarmon, Acting 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 should be simultaneously submitted to Karen A. Phillips, Chief

Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code articles 24.06(c), 24.09, and §36.001. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the department.

The following articles of the Insurance Code are affected by this section: Articles 24.05, 24.06, 24.08, 24.09, and 24.10.

§25.88. General Administrative Expense Assessment.

On or before April 1, 2003 [~~2002~~], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 24, shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .00787 [~~.00135~~] of 1.0% of the total loan dollar volume of the company for calendar year 2002 [~~2001~~].

(2) If the amount of the assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

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 31, 2002.

TRD-200207142
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-6327

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER G. INTERNATIONAL BRIDGES

43 TAC §15.73

The Texas Department of Transportation (department) proposes amendments to §15.73, concerning international bridges.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §201.612, provides that the Texas Transportation Commission (commission) may adopt rules providing for the approval of proposed bridges over the Rio Grande. The commission has therefore previously adopted §§15.70-15.76 to specify the process for approval of proposed bridges over the Rio Grande.

Section 15.73 is amended to eliminate duplicative environmental reviews by the commission and by the federal government. As originally adopted, the rule was not expected to generate additional burdens for applicants. Experience with administration of the rule, however, has shown that in practice, the existing provisions can impose duplicative requirements that are not necessary for commission review.

Section 15.73(3)(A)(i) is amended to eliminate the requirement that applicants follow the exact procedures applicable to the department in conducting environmental reviews and ensuring public involvement. Rather, applicants will be required to comply with federal law. In addition, §15.73(3)(A)(ii) is amended to eliminate the requirement that the department approve any decision that an environmental impact statement is unnecessary. This change eliminates a level of approval that unnecessarily duplicates an approval that would be required from the federal government.

Section 15.73(3)(B) is amended to eliminate the requirement that applicants follow the exact procedures applicable to the department in ensuring public involvement. Formal public hearings will not be required, but the applicant must still hold public meetings, which may take place at any point during the application process. This more flexible procedure will satisfy the department's needs without unduly duplicating federal requirements, which must still be met independently.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

James L. Randall, P.E., Director, Transportation Planning and Programming Division, 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. Randall has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the removal of duplicative and unnecessary requirements regarding applications for approval of international bridges. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to James L. Randall, P.E., Director, Transportation Planning

and Programming Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 16, 2002.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §201.612, which authorizes the department to adopt rules relating to the approval of international bridges.

No statutes, articles, or codes are affected by the proposed amendments.

§15.73. Preliminary Studies.

Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a study of the design, financial feasibility, and the social and environmental impact of the project.

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

(3) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act (NEPA), Title 42, United States Code, §§4321 et seq., and Title 23, United States Code, §109(h), and shall provide for public involvement.

(A) Environmental documentation.

(i) An applicant shall prepare an environmental assessment or [~~and/or~~] an environmental impact statement in accordance with NEPA [~~§2.43(d) and (e) of this title (relating to Highway Construction Projects - State Funds)~~].

(ii) The form and content of an environmental assessment or [~~and~~] environmental impact statement prepared by an applicant [~~and any decision by an applicant that an environmental impact statement is not necessary~~] must be approved by the department.

(B) Public involvement. An applicant shall provide for public involvement by:

[~~*(i)* complying with §2.43(b) of this title (relating to Highway Construction Projects - State Funds);~~]

(i) [~~(ii)~~] holding one or more public meetings; [~~hearings following the completion of the studies required by this section as may be necessary to ensure participation by each community affected by the project; and~~]

(ii) publishing a notice of the public meeting in local newspapers having a general circulation not less than 10 days before each public meeting; and

(iii) notifying the department in writing not less than 10 days in advance of each public meeting [~~all public meetings and public hearings held under this section~~].

(C) Record. An applicant shall provide the department a summary of all public meetings [~~and a summary and analysis of all public hearings~~] held under this section. The summary and analysis for each public meeting [~~hearing~~] shall include:

(i) a summary of the meeting [~~the verbatim transcript of the hearing~~];

(ii) a summary of comments received, and the response to and analysis of comments; and

(iii) a summary of the [~~any~~] proposed changes in project location and design planned as a result of comments. [~~; and~~]

[~~*(iv)* certification that the public hearings were held in accordance with §2.43(b) of this title (relating to Highway Construction Projects - State Funds), and the Civil Rights Act of 1964.~~]

(D) Revision to environmental document. An [~~Following the public hearing, an~~] applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.

(4) (No change.)

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207151
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-8630

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§17.20, 17.24, 17.28, 17.50

The Texas Department of Transportation (department) proposes amendments to §§17.20, 17.24, 17.28, and 17.50, concerning motor vehicle registration.

EXPLANATION OF PROPOSED AMENDMENTS

Currently motorists must obtain specialty and exempt license plates directly from the department. The amendments will permit motorists to obtain specialty and exempt license plates from their local county tax assessor-collectors, where they already perform title and registration transactions. This will improve efficiency and make it easier for motorists to obtain these plates.

In addition, the amendments adjust the fees for specialty plates to take into account several recent legislative enactments that allow for registration periods of more or less than 12 months. The amendments also allow greater flexibility in transferring specialty plates between vehicles and between motorists. Amendments are also proposed to enhance the department's handling of seized disabled placards. The amendments also make technical changes in the handling of some specialty plates to facilitate administration of the program and allow for the issuance of temporary cardboard tags while a motorist is waiting for a specialty plate to be manufactured. Terminology is standardized by using the term "specialty plate" throughout. Finally, nonsubstantive changes are made to update citations, improve grammar, and enhance readability and clarity.

Section 17.20 is amended to update a citation, to conform the cross-reference to current Texas Register style, and to improve grammar and readability.

Section 17.24 is amended to improve the process under which the department hears appeals relating to the seizure of disabled placards. Amendments are also made to shorten and clarify some phrases.

Section 17.24(g) is amended to provide more detailed guidance regarding the handling of appeals from the seizure of disabled placards. Under Transportation Code, §681.012, law enforcement officers seize disabled placards that are misused in connection with parking violations. The officers then send the placards to the department. If a motorist petitions to have a placard returned, the department must hold a hearing. The amendments require that the department be provided with a copy of the parking citation and with a short explanation of the nature of the violation at the time the original placard is submitted. This has proved necessary because it is difficult for the department to defend the seizure without knowledge of the underlying circumstances. In addition, the amendments specify the situations in which the department may return the seized placard without a hearing. Finally, the amendments clarify that the department's attorneys in the Attorney General's Office may settle a case depending on its particular facts.

Section 17.28 is amended to provide that applications for most specialty plates will be made to county tax assessor-collectors instead of to the department. Motorists are given more flexibility in transferring specialty plates between vehicles and owners, and specialty plate fees are coordinated with registration fees when registration periods are more or less than 12 months. Additional technical changes are made to the handling of individual plates, and nonsubstantive changes are made to enhance readability.

Section 17.28(b)(1)(B)(i) is amended so that some applications need not include the signature of the applicant. This will permit the more efficient handling of some applications and facilitate the simultaneous renewal of specialty plates and registration.

Section 17.28(b)(2)(B)(iii) is added to address the fees for specialty plates when the legislature has determined that the registration period for a vehicle may be more or less than 12 months. In that case, the legislative intent can best be accomplished by coordinating the expiration dates for the specialty plates and their fees with the revised registration period.

Section 17.28(b)(3) is amended to provide that applications for specialty plates should be filed with tax assessor-collectors, except for a few plates that have very selective distribution. This will improve efficiency by more closely coordinating issuance of specialty plates with registration and will make it easier for the public to obtain and renew specialty plates.

Section 17.28(c)(2) is amended to change the wording on the Volunteer Firefighter plate from "Vol Firefighter" to "Certified Firefighter." The new wording better reflects the categories of persons eligible for this plate.

Section 17.28(c)(3)(B)(iii) is amended to add classic motorcycle plates and disabled veteran motorcycle plates to the list of vehicles receiving only one license plate. Classic motorcycle plates had been inadvertently omitted from this list, while disabled veteran motorcycle plates are newly authorized.

Section 17.28(c)(8)(B) is amended to remove the limitation of four or five characters on some personal plates because this limitation is no longer necessary.

Section 17.28(c)(8)(D) is amended to eliminate the prohibition on the issuance of personalized plates for exempt vehicles. Exempt vehicles may now be eligible for personalized plates on payment of the normal fee for personalized plates.

Section 17.28(c)(8)(E) is amended to add Apportioned, Congressional Medal of Honor, Fertilizer, and Volunteer Firefighter plates to the list of plates that cannot be personalized. These plates were inadvertently omitted from the list in the past.

Section 17.28(d)(1)(A) is amended to eliminate the provision that the listed five-year plates will always expire in March. This change will permit the department to stagger the expiration dates of these plates and thus to distribute work more evenly through the year.

Section 17.28(d)(1)(B) is amended to add U.S. Congress, U.S. Judge, and State Judge plates to the list of plates expiring each March. These plates were formerly considered to fall under the broad category of State Official plates, but are now being given separate consideration. Forestry Vehicle, Former Prisoner of War, Legion of Valor, and Pearl Harbor Survivor plates are deleted from the list to permit the department to stagger the expiration dates of these plates and thus to distribute work more evenly through the year.

Former §17.28(d)(1)(C) is deleted to eliminate the provision that the listed plates will always expire in June. This change will permit the department to stagger the expiration dates of these plates and thus to distribute work more evenly through the year. Succeeding paragraphs are renumbered accordingly.

Section 17.28(d)(1)(E) is added to ensure that most specialty plates expire at the same time as a vehicle's registration.

Section 17.28(d)(2)(A) is amended to provide that renewal applications for specialty plates be filed with the tax assessor-collectors instead of with the department, except for those applications that must be filed directly with the department by statute. Renewal notices will be sent out 60 days before expiration of the existing plates, and they will be incorporated with renewal notices for registration. These changes will improve efficiency by more closely coordinating issuance of specialty plates with registration and will make it easier for the public to renew specialty plates.

Section 17.28(d)(2)(B) is amended to provide that fees must be paid to tax assessor-collectors even when documentation is provided directly to the department. This concentrates the payment of registration and special plate fees with the counties, which will promote efficiency.

Section 17.28(d)(2)(D) is amended to remove Legion of Valor and Honorary Consul plates from the list of specialty plates for which new plates will be issued when the old plates expire. This change will permit the department to issue multi-year plates, which will reduce the costs associated with those plates. State Judge, County Judge, U.S. Congress, U.S. Judge plates are added to the list of plates that are replaced each year. These plates were formerly considered to fall under the broad category of State Official plates, but are now being given separate consideration.

Section 17.28(e) is amended to provide greater flexibility in transferring plates between vehicles, persons, or both. Section 17.28(e)(1) is amended to allow the transfer of plates between vehicles, except those plates whose distribution is limited to particular vehicles. Section 17.28(e)(2) is amended to allow the transfer of plates between persons, except those plates whose distribution is limited to particular persons. Section 17.28(e)(3) is added to clarify that if a plate is being transferred between

vehicles and persons at the same time, the transfer must meet all the criteria for each kind of transfer. In any case, transfer is only permitted after the filing of an application with the county tax assessor-collector. These changes will provide motorists with greater flexibility while ensuring that the department's records are always kept current.

Section 17.28(f)(2) is amended so that the department can issue temporary cardboard tags instead of permanent license plates when specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated. This change is intended to provide savings by avoiding the issuance of a relatively expensive, long-lasting plate for temporary use that may be limited to a few weeks.

Section 17.50 is amended to provide that applications for exempt plates will be made to county tax assessor-collectors instead of to the department. Nonsubstantive changes are also made to improve readability.

Section 17.50(a)(2)(D) is eliminated as unnecessary. The issuance of disabled placards for use with exempt vehicles is already adequately addressed in §17.24(c)(4).

Former §17.50(a)(3) is separated into subparagraphs (A), (B), and (C) to distinguish more clearly among the application requirements for different kinds of exempt registrations that display ordinary plates. In addition, subparagraph (D) is added to address the issuance of exempt registration to university presidents under Education Code, §51.932.

Section 17.50(c)(1) is amended to provide that applications for exempt registration must be filed with the county tax assessor-collectors, instead of with the department. This will make it easier for eligible entities to obtain and renew exempt plates.

Section 17.50(c)(3) is deleted. By not requiring the surrender of damaged exempt plates, the department will be treating exempt and non-exempt plates in the same manner.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each year of the first five years the amendments as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments. The effect on state government for Fiscal Years 2003-2007 will be an estimated annual reduction in cost to the state of $230,000. The effect on local governments for Fiscal Years 2003-2007 will be an estimated annual increase in cost of $130,000. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, 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. Dike has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to permit motorists to obtain registration and specialty plates at the same location and thus to engage in a form of one-stop shopping. This will improve efficiency because the county tax assessor-collectors will be able to assign specialty and exempt license plates, assign windshield or license plate validation stickers, and collect specialty plate fees and registration fees at one location in less time than has been required when motorists have had to apply for specialty plates to the department. Additional public benefits include improving the handling of seized disabled placards, allowing the public to transfer specialty plates more easily, and increasing public understanding of the procedures governing the issuance of disabled placards and plates, specialty plates, and exempt plates. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 16, 2002.

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 department. The amendments are also proposed under Transportation Code, §502.0021, which authorizes the department to establish rules governing the registration of motor vehicles.

No statutes, articles, or codes are affected by the proposed amendments.

§17.20. Purpose and Scope.

Transportation Code, Chapter 502, charges [~~Texas Civil Statutes, Article 6675a-1, et seq., charge~~] the department with the responsibility of registering vehicles operated on [~~upon~~] the public streets and highways of this state; maintaining vehicle registration records; and collecting and reporting [~~of~~] statutory registration fees. For [~~In order for~~] the department to [~~efficiently and effectively~~] perform these duties efficiently and effectively and to ensure proper application by motor vehicle registrants in accordance with statutory provisions, the sections in this subchapter [~~under this undesignated head~~] prescribe the policies and procedures for the application and issuance of vehicle registration.

§17.24. Disabled Person License Plates and Identification Placards.

(a) Purpose. Transportation Code, Chapters 502 and 681, charges the department with the responsibility for issuing specially designed license plates and identification placards for disabled persons. For [~~In order for~~] the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and placards.

(b) Issuance.

(1) Disabled person license plates.

(A) Eligibility. In accordance with Transportation Code, §502.253, the department will issue specially designed license plates displaying the international symbol of access to permanently disabled persons or their transporters instead [~~in lieu~~] of regular motor vehicle license plates.

(B) Specialty [~~Special category~~] license plates. The department will issue disabled person insignia on those specialty [~~special category~~] license plates that can accommodate the identifying insignia and that are issued in accordance with §17.28 of this subchapter.

(C) License plate number. Disabled person license plates will bear a license plate number assigned by the department or will bear a personalized license plate number issued in accordance with §17.28 of this subchapter.

(2) (No change.)

(c) (No change.)

(d) Renewal.

(1) License plates. Disabled person license plates are valid for a period of 12 months from the date of issuance, and are renewable as specified in §17.22 of this subchapter.

(2) Identification placards.

(A) Place of renewal application. Prior to the expiration of a disabled person identification placard, an applicant must apply for renewal to the tax assessor-collector of the county in which the owner resides.

(B) Accompanying documentation. To [In order to] renew a permanently disabled person identification placard, an applicant must present the placard that is expiring, a receipt showing that a disabled person placard was previously issued to the applicant, or a copy of the previous identification placard application. If a previous application, placard, or receipt is not available, the applicant must reapply as described in subsection (c) of this section.

(3) (No change.)

(e) Replacement.

(1) License plates. If disabled person license plates are lost, stolen, or mutilated, the owner may obtain replacement license plates by applying with a county tax assessor-collector.

(A) Accompanying documentation. To [In order to] replace permanently disabled person license plates, the owner must present the current year's registration receipt and personal identification acceptable to the tax assessor-collector.

(B) Absence of accompanying documentation. If the current year's registration receipt is not available and the county cannot verify that the disabled person license plates were issued to the owner, the owner must reapply in accordance with subsection (c) of this section.

(2) Disabled person identification placards. If a disabled person identification placard becomes lost, stolen, or mutilated, the owner may obtain a new identification placard in accordance with subsection (c) of this section.

(f) Transfer of disabled person license plates and identification placards.

(1) License plates.

(A) Transfer between persons. Disabled person license plates may not be transferred between persons. An owner who sells or trades a vehicle to which disabled person license plates have been issued shall remove the disabled person license plates from the vehicle. The owner shall return the license plates to the department and shall obtain appropriate replacement license plates to place on [upon] the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled person license plates may not be transferred between vehicles.

(2) (No change.)

(g) Seizure and revocation of placard.

(1) After a law enforcement officer seizes a placard under Transportation Code, §681.012, the officer shall promptly provide the department with the following items:

(A) the original seized placard;

(B) a copy of the citation issued under Transportation Code, §681.011(a) or (d); and

(C) a brief summary of the events giving rise to the citation.

(2) The person to whom the seized placard was issued may petition for a hearing under §1.21 et seq. of this title (relating to Procedures in Contested Cases).

(A) If the department has not received the items specified in paragraph (1) of this subsection, the department will return the original seized placard or issue a replacement placard to the petitioner.

(B) If the department determines from written evidence that the citation was dismissed or withdrawn, the department will return the original seized placard or issue a replacement placard to the petitioner.

(C) If the department has received the items specified in paragraph (1) of this subsection and if the citation has not been dismissed or withdrawn, the department will refer the matter to the State Office of Administrative Hearings for a hearing.

(i) If it is determined after a hearing that no offense was committed under Transportation Code, §681.011(a) or (d), the department will return the original seized placard or issue a replacement placard to the petitioner.

(ii) If it is determined after a hearing that an offense was committed under Transportation Code, §681.011(a) or (d), the revocation will continue and the petitioner shall not obtain a new placard for one year from the date of the offense.

(iii) At any time after the matter has been referred to the State Office of Administrative Hearings, the attorney for the department may dismiss the case for insufficient evidence or negotiate a settlement providing for return of the seized placard or issuance of a replacement placard.

[(g) Seizure and revocation of placard. A person from whom a placard was seized by a law enforcement officer under Transportation Code, §681.012 may request a hearing in accordance with §1.21 et seq. of this title (relating to Procedures in Contested Cases) to determine if the revocation should continue or if the placard should be returned to the person and the revocation rescinded. If it is determined that an offense was committed under Transportation Code, §681.011, the revocation shall continue and the disabled person shall be precluded from obtaining a new placard for a period of no less than one year from the date of the offense.]

§17.28. Specialty [Special Category] License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapter 502, charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 502, charges the department with providing specialty [special category] license plates, symbols, tabs, and other devices. For [In order for] the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty [special category] license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates [special license plate categories].

(b) Initial application for specialty [special category] license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §17.22 of this subchapter [~~(relating to Motor Vehicle Registration),~~] who wishes to apply for a specialty [~~special category~~] license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require[~~:~~]

[~~(i) the signature of the owner of the vehicle; and~~]

[~~(ii)~~] the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee [~~fees~~], unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed annual specialty [~~special category~~] license plate fee [~~fees~~], with the following exceptions.

(i) The New Millennium license plate fee shall include a $5 administrative fee in addition to the statutorily prescribed fee.

(ii) The Read to Succeed license plate fee shall include a $5 administrative fee in addition to the statutorily prescribed fee.

(iii) If a registration period is other than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate annual fee.

(C) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute.

(D) The application must include evidence of eligibility for any specialty [~~special category~~] license plates. The evidence of eligibility may include, but is not limited to:

(i) a license issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency's letterhead;

(iii) discharge papers; and

(iv) marriage and death certificates.

(E) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates must be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) Congressional Medal of Honor;

(B) State Judge;

(C) State Official;

(D) U.S. Congress-House;

(E) U.S. Congress-Senate; and

(F) U.S. Judge.

[~~(3) Place of application. All initial applications for special category license plates must be made to the department, with the exception of:~~]

[~~(A) "Cotton Vehicle" license plates, which may be made either to the department or to the county tax assessor-collector of the county in which the owner resides; and~~]

[~~(B) Golf Cart license plates, which must be made to the county tax assessor-collector of the county in which the owner resides.~~]

(c) Initial issuance of specialty [~~special category~~] license plates, symbols, tabs, or other devices.

(1) Issuance. On [~~Upon~~] receipt of a complete initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty [~~special category~~] license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty [~~special category~~] license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty [~~special category~~] license plates may be issued.

(2) Category name on license plates. Specialty [~~Special category~~] license plates will bear the statutorily prescribed name of the plate or category, with the following exceptions.

(A) The department will issue Disaster Relief license plates bearing the word "Disaster."

(B) The department will issue license plates, symbols, tabs, or other devices for display on Exhibition Vehicles bearing the words "Antique Vehicle," "Antique Motorcycle," or "Military Vehicle."

(C) The department will issue Parade license plates bearing the suffix "PAR."

(D) The department will issue Volunteer Firefighter license plates bearing the words "Certified Firefighter." [~~"Vol Firefighter."~~]

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty [~~special category~~] license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for the following license plate categories:

(i) Antique Motorcycle;

(ii) Antique Vehicle;

(iii) Classic Motorcycle;

(iv) Cotton Vehicle;

(v) Disabled Veteran Motorcycle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader;

(x) Former Military Vehicle; and

(xi) Parade.

[(B) One plate. One license plate will be issued per vehicle for the following license plate categories:]

[(i) Cotton Vehicle;]

[(ii) Disaster Relief;]

[(iii) Antique Vehicle;]

[(iv) Antique Motorcycle;]

[(v) Military Vehicle;]

[(vi) Forestry Vehicle;]

[(vii) Log Loader;]

[(viii) Parade; and]

[(ix) Golf Cart.]

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead [in lieu] of displaying Former Military Vehicle license plates on a Former Military Vehicle.

(4) Validation stickers and tabs. Instead [In lieu] of license plates, the department will issue validation stickers and tabs to the following vehicles.

(A) Classic Motor Vehicles. Validation stickers [displaying the words "Texas Classic"] will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of a [the] Classic Motor Vehicle.

(B) Certain Exhibition Vehicles. Validation stickers or tabs [displaying the word "Antique"] will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of the Exhibition Vehicle, except Former Military Vehicles.

(5) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty [special category] license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty [special category] license plates, symbols, tabs, or other devices is assigned, or a certificate of title application shall be filed in that person's name at the time the specialty [special category] license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide [department shall require] a copy of the lease agreement verifying that the applicant currently leases the vehicle [vehicle is currently leased by the person to whom the special category license plate, symbol, tab, or other device was assigned].

(6) Classification of golf carts. If a golf cart does not meet the statutorily prescribed criteria for golf cart license plates but must be registered, its registration classification will be determined by whether it is designed as a 4-wheeled truck, a 4-wheeled passenger vehicle, or a 3-wheeled motorcycle.

(7) Number of vehicles. An owner may purchase specialty [special category] license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty [special category] license plate may be issued.

(8) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may [not] contain no more than six alpha or numeric characters[,] or a combination of [or such] characters. [Certain personalized special category license plates may not, depending upon the license plate design and space limitations, contain more than four or five alpha or numeric characters, or a combination of such characters.] Spaces, hyphens, periods, or one silhouette of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved if the number:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) is determined to be obscene or objectionable by the director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Personalized plates are available for [to] all classifications of vehicles [except those vehicles bearing license plates that receive full or partial exemption from regular registration fees (except Metal Dealer license plates)].

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display for the following specialty [special category] license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

(v) Armed Forces Reserve;

(vi) Congressional Medal of Honor;

(vii) Cotton Vehicle;

(viii) County Judge;

(ix) Disabled Veteran;

(x) Disaster Relief;

(xi) Farm Trailer;

(xii) Farm Truck;

(xiii) Farm Truck Tractor;

(xiv) Fertilizer;

(xv) Five Year Token Trailer;

(xvi) Foreign Organization;

(xvii) Forestry Vehicle;

(xviii) Former Prisoner of War;

(xix) Golf Cart;

(xx) Honorary Consul;

(xxi) Legion of Valor;

(xxii) Log Loader;

(xxiii) Machinery;

(xxiv) Former Military Vehicle;

(xxv) Parade;

(xxvi) Permit;

(xxvii) Rental Trailer;

(xxviii) Soil Conservation;

(xxix) Texas Guard; and

(xxx) Volunteer Firefighter.

[*(ii)* Antique Vehicle;]

[*(iii)* Antique Motorcycle;]

[*(iv)* Military Vehicle;]

[*(v)* Armed Forces Reserve;]

[*(vi)* County Judge;]

[*(vii)* Cotton Vehicle;]

[*(viii)* Disabled Veteran;]

[*(ix)* Disaster Vehicle;]

[*(x)* Farm Truck;]

[*(xi)* Foreign Organization;]

[*(xii)* Forestry Vehicle;]

[*(xiii)* Former Prisoner of War;]

[*(xiv)* Golf Cart;]

[*(xv)* Honorary Consul;]

[*(xvi)* Legion of Valor;]

[*(xvii)* Log Loader;]

[*(xviii)* Machinery;]

[*(xix)* Parade;]

[*(xx)* Permit;]

[*(xxi)* Soil Conservation; and]

[*(xxii)* Texas Guard.]

(F) Fee. The statutorily prescribed personalized license plate fee will be charged in addition to any prescribed specialty [special category] license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if [, provided] a timely renewal application is submitted to the county tax assessor-collector [department] each year in accordance with subsection (d) of this section.

(d) Specialty [Special Category] license plate renewal.

(1) Length of validation. All specialty [special category] license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance, with the following exceptions.

(A) Five year period. The following license plates and registration numbers are issued for a five year period [or for the remainder of that period, and expire every five years in March]:

(i) Antique Vehicle and Antique Motorcycle license plates and Antique tabs;

(ii) Former Military Vehicle license plates and registration numbers; and

(iii) Parade license plates.

(B) March expiration dates. The following license plates are issued for a 12 month period[, or for the remainder of that period, and expire annually in March]:

(i) Congressional Medal of Honor;

(ii) Cotton Vehicle;

(iii) County Judge;

(iv) Disaster Relief;

(v) State Judge;

[*(v)* Forestry Vehicle;]

[*(vi)* Former Prisoner of War;]

[*(vii)* Legion of Valor;]

[*(viii)* Pearl Harbor Survivor; and]

(vi) [(ix)] State Official;

(vii) U.S. Congress-House;

(viii) U.S. Congress-Senate; and

(ix) U.S. Judge.

[(C) June expiration dates. The following license plates are issued for a 12 month period, or for the remainder of that period, and expire annually in June:]

[*(i)* Armed Forces Reserve;]

[*(ii)* Honorary Consul; and]

[*(iii)* Texas Guard.]

(C) [(D)] September expiration dates. Log Loader license plates are issued for a 12 month period[, or for the remainder of that period, and expire annually in September].

(D) [(E)] No expiration date. Foreign Organization license plates are valid for as long as the registered vehicle is owned and operated by the foreign organization.

(E) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(2) Renewal.

(A) Renewal Notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of Notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the fee to the county tax assessor-collector and documentation directly to the department:

(i) Congressional Medal of Honor;

(ii) State Judge;

(iii) State Official;

(iv) U.S. Congress-House;

(v) U.S. Congress-Senate; and

(vi) U.S. Judge.

[(A) Renewal Notice. The department will send a special category license plate renewal notice to each owner approximately 90 days prior to the expiration date.]

[(B) Return of Notice. Upon receipt of the renewal notice, the owner must return the statutorily prescribed renewal fee, if applicable, and any prescribed documentation to the department, except for owners of vehicles with Golf Cart or Cotton Vehicle license plates. Upon receipt of the renewal notice, the owner of a vehicle with Golf Cart or Cotton Vehicle license plates must return the statutorily prescribed renewal fee and any prescribed documentation to the county tax assessor-collector of the county in which the owner resides.]

[(C) Registration Renewal. Upon receipt of the special category license plate renewal, the department will notify the owner regarding registration renewal, in accordance with §17.22(d) of this subchapter.]

(C) [(D)] Expired [Reservation of expired] plate numbers. The department will retain [reserve] a specialty [personalized] license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued [department may consider an application for the issuance of the unused personalized license plate number] to a new applicant. All specialty [special category] license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) [(E)] Issuance of validation insignia. On [Upon] receipt of a completed [the] license plate renewal application and prescribed documentation, [as specified in this subsection,] the department will issue registration validation insignia as specified in §17.22 of this subchapter, except for those plates listed in clauses (i) or (ii) of this paragraph or unless this section or other law requires the issuance of new license plates to the owner.

(i) New license plates will [shall] be issued when the following specialty license plates expire: [upon expiration for renewed Antique Vehicle, Antique Motorcycle, Military Vehicle, Congressional Medal of Honor, Disaster Relief, Honorary Consul, Legion of Valor, Parade, and State Official license plates.]

(I) Antique Motorcycle;

(II) Antique Vehicle;

(III) Congressional Medal of Honor;

(IV) County Judge;

(V) Disaster Relief;

(VI) Former Military Vehicle;

(VII) Parade;

(VIII) State Judge;

(IX) State Official;

(X) U.S. Congress-House;

(XI) U.S. Congress-Senate; and

(XII) U.S. Judge.

(ii) New license plates shall be issued every six years for renewed personalized license plates, and every eight years for other specialty license plates [plate categories], in accordance with the provisions of §17.22 of this subchapter.

(E) [(F)] Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty [special category] license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty [special category] license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if [If the owner of a vehicle registered with special category license plates disposes of the vehicle during the registration year, the owner's special category license plates may be transferred and displayed upon another vehicle upon proper application with the department, provided that] the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty [special category] license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty [special category] license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle and Antique Motorcycle license plates and Antique tabs;

(ii) Former Military Vehicle license plates and registration numbers;

(iii) Classic Auto, Classic Truck, and Classic Motorcycle license plates and Texas Classic validation stickers;

(iv) Parade license plates;

(v) Forestry Vehicle license plates; and

(vi) Log Loader license plates.

(2) Transfer between owners.

(A) Transferable between owners. Specialty license plates, symbols, tabs, or other devices are transferable from one person to another by filing an application with the county tax assessor-collector and paying the full annual fee if the new owner is eligible for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between owners. The following specialty license plates, symbols, tabs, or other devices are not transferable from one person to another except as specifically permitted by statute:

(i) Amateur Radio;

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Armed Forces Reserve;

(v) Armed Forces;

(vi) Classic Auto;

(vii) Classic Motorcycle;

(viii) Classic Truck;

(ix) Coast Guard Auxiliary;

(x) Congressional Medal of Honor;

(xi) Cotton Vehicle;

(xii) County Judge;

(xiii) Desert Storm;

(xiv) Disabled Veteran;

(xv) Disaster Relief;

(xvi) Foreign Organization;

(xvii) Forestry Vehicle;

(xviii) Former Prisoner of War;

(xix) Gold Star Mother;

(xx) Honorary Consul;

(xxi) Korea Veteran;

(xxii) Legion of Valor;

(xxiii) Log Loader;

(xxiv) Marine Corps League;

(xxv) Merchant Marine;

(xxvi) Former Military Vehicle;

(xxvii) Parade;

(xxviii) Peace Officer;

(xxix) Pearl Harbor Survivor;

(xxx) Permit;

(xxxi) Purple Heart;

(xxxii) Soil Conservation;

(xxxiii) State Judge;

(xxxiv) State Official;

(xxxv) Texas Guard;

(xxxvi) Texas Wing Civil Air Patrol;

(xxxvii) U.S. Congress-House;

(xxxviii) U.S. Congress-Senate;

(xxxix) U.S. Judge;

(xl) Vietnam Veteran;

(xli) Volunteer Firefighter; and

(xlii) World War II Veteran.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraph (1) and paragraph (2) of this subsection.

[(2) Transfer between owners. Special category license plates are non-transferable between owners unless such transfer is provided for by law or this section. If the owner of a vehicle registered with special category license plates disposes of the vehicle during the registration year, the special category license plates must be returned to the department and regular replacement plates must be purchased for the vehicle.]

[(3) Transfer through court order. A personalized license plate number may be transferred without payment of the personalized license plate fee when the personalized license plate number is awarded to a new owner by court order. The department shall require verification of the court order, and the vehicle shall be titled or leased in the owner's name as specified in subsection (c)(5) of this section.]

(f) Replacement.

(1) Application. When specialty [special category] license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector [department] for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Interim replacement tags [plates]. If the specialty [special category] license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured [would require it to be remanufactured by the department], the owner must pay the statutory replacement fee, and the department will issue a temporary cardboard tag [to obtain regular license plates] for interim use. The owner's specialty license plate number will be shown on the temporary cardboard tag. [The owner must also pay the statutory replacement fee to obtain the remanufactured special category license plate, symbol, tab, or other device.]

(3) Stolen vehicles. The county tax assessor-collector [department] will not approve the issuance of replacement [special category] license plates with the same personalized license plate number when the department's records indicate that the vehicle displaying the personalized [special category] license plates, symbols, tabs, or other devices[,] or the license plates, symbols, tabs, or other devices themselves[,] were reported as stolen. On expiration or [Upon] recovery of the stolen vehicle or license plates, symbols, tabs, or other devices, [or upon expiration,] the department will issue, at the owner's request, replacement [special category] license plates, symbols, tabs, or other devices bearing the same personalized number as those that were stolen.

(g) (No change.)

(h) License plates created after January 1, 1999. In accordance with Transportation Code, §502.2526, the department will begin to [manufacture and] issue specialty [special category] license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written request for the manufacture of that license plate including at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit or license plate fees set forth in paragraph (2) of this subsection.

(2) The written request must be accompanied by:

(A) a deposit in the amount of $15,000 in the form of a single payment, made payable to the Texas Department of Transportation; or

(B) if the license plates are presold, the prescribed number of properly executed applications for that license plate accompanied by a single payment, made payable to the Texas Department of

Transportation, in an amount equal to the prescribed fees for issuance of those license plates; or

(C) if the sponsoring entity submits less than the prescribed number of properly executed applications for that license plate accompanied by a single payment, a deposit made payable to the Texas Department of Transportation, that consists of:

(i) the prescribed license plate fees for those applications submitted; and

(ii) a deposit equal to $15,000 less the prescribed portion of those license plate fees to be retained by the department, and deposited to the State Highway Fund, for issuance of the license plates for which applications are submitted.

(3) The deposit submitted to the department under paragraph (2)(A) or (2)(C) of this subsection will be returned to the sponsoring entity only if the prescribed number of sets of the applicable license are issued or presold.

(i) (No change.)

§17.50. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.202, a vehicle owned by and used exclusively in the service of a governmental agency, used exclusively for public school transportation services, used for fire fighting or by a volunteer fire department, or used in volunteer county marine law enforcement is exempt from payment of a registration fee and is eligible for exempt plates [~~, and the department will issue exempt plates to those vehicles~~].

(2) Application for exempt registration.

(A) Application. An [~~The~~] application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size[~~,~~] and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency Medical Service Vehicle.

(i) Exempt registration may be issued for a vehicle that [~~which~~] is owned or leased by a non-profit emergency medical service provider; a municipality or county [~~, county, or combination of both~~]; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code, §502.204.

(ii) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.204.

(iii) A copy of an emergency medical service provider license issued by the Texas Board of Health must accompany the application.

(C) Fire fighting vehicle. The application for exempt registration of a fire fighting vehicle owned privately or by a volunteer fire department must contain the vehicle description. The affidavit must be executed by the person who has the proper authority[~~,~~] and shall state [~~either~~] that:

(i) the vehicle is privately owned and is designed and used exclusively for fire fighting; [~~,~~] or

(ii) [~~that~~] the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business [~~of such department~~].

[~~(D) Disabled insignia. The application for disabled person registration insignia for a vehicle used by an exempt agency to regularly transport disabled persons may be used to obtain a specially designed disabled person placard in accordance with §17.24 of this title, (relating to Disabled Person License Plates and Identification Placards)~~].

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the rule that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932.

[~~(3) Exception. If the applicant is a law enforcement agency or is exempt from the inscription requirements under Transportation Code, §721.003 and §721.005, and the vehicle is not registered under subsection (b) of this section, then the vehicle may display license plates which are not marked with the word "exempt," and the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities or that the applicant is exempt from inscription requirements under Transportation Code, §721.003 and §721.005. If a vehicle is exempt from inscription requirements under Transportation Code, §721.005, then the applicant must provide a copy of the order or ordinance which exempts the vehicle.~~]

(b) Affidavit for issuance of exempt registration under an alias.

(1) On [~~Upon~~] receipt of an affidavit for alias exempt registration, properly executed by the executive administrator of an exempt [~~agency that is a~~] law enforcement agency, the department will issue

alias exempt registration [~~will be issued~~] annually [~~by the department~~] for a vehicle used in covert criminal investigations.

(2) The affidavit for alias exempt registration must [~~issued under an alias for use on law enforcement vehicles shall~~] be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of [~~either~~] the executive administrator or the executive administrator's [~~his or her~~] designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall [~~will~~] be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A [~~Upon the appointment of a new executive administrator or his or her designee, a~~] new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator. [~~The jurat must be signed by a notary public.~~]

(5) The affidavit for alias exempt registration must be accompanied by a certificate of title application under §17.7 of this chapter. The application must contain [~~as cited in §17.7 of this title (relating to Alias Certificate of Title) which identifies~~] the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt plate is [~~registration becomes~~] lost, stolen, or mutilated, a properly executed application [~~replacement affidavit~~] for exempt [~~license~~] plates must be submitted to the county tax assessor-collector [~~department~~].

(2) An [~~The~~] application for replacement exempt [~~license~~] plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle [~~described~~] have been lost, stolen, or mutilated[~~,~~] and will not be used on any other vehicle.

[~~(3) Any remaining plate or plates must be removed and surrendered to the department upon issuance of the replacements.~~]

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

[~~(d) Title requirements. Prior to or simultaneously with the issuance of exempt registration, the vehicle must be titled, unless otherwise exempted by law.~~]

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 November 1, 2002.

TRD-200207153
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2002
For further information, please call: (512) 463-8630

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture has withdrawn from consideration the emergency amendment to §20.22 which appeared in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9847).

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207146
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 1, 2002
For further information, please call: (512) 463-4075

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.56

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed section, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn. The repealed section as proposed appeared in the May 3, 2002 issue of the *Texas Register* (27 TexReg 3703).

Filed with the Office of the Secretary of State on November 5, 2002.

TRD-200207222

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §§449.1, 449.3, 449.5

The Texas Commission on Fire Protection has withdrawn from consideration the proposed amendments to §§449.1, 449.3, and 449.5 which appeared in the August 23, 2002 issue of the *Texas Register* (27 TexReg 7778).

Filed with the Office of the Secretary of State on October 31, 2002.

TRD-200207137
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: October 31, 2002
For further information, please call: (512) 239-4921

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 381. GUARDIANSHIP SERVICES

SUBCHAPTER D. STANDARDS FOR GUARDIANSHIP PROGRAMS

The Texas Health and Human Services Commission (HHSC or Commission) adopts new subchapter D, Standards for Guardianship Services, Division 1, General, §§381.301, 381.303, 381.305; Division 2, Administration and Fiscal Management, §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325; Division 3, Personnel Management, §§381.331, 381.333, 381.335, 381.337, 381.339; and Division 4, Guardianship Programs and Client Services, §§381.345, 381.347, 381.349, 381.351, 381.353, 381.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367.

HHSC adopts §§381.301, 381.303, 381.305, 381.315, 381.319, 381.321, 381.323, 381.325, 381.331, 381.333, 381.335, 381.337, 381.339, 381.345, 381.347, 381.349, 381.351, 381.355, 381.359, 381.361, and 381.367 without changes to the proposed text published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3658) and will not be republished.

HHSC adopts §§381.317, 381.353, 381.357, 381.363, and 381.365 with changes to the proposed text published in the May 3, 2002 issue of the *Texas Register* (27 TexReg 3658) and will be republished. Changes in the adopted amendments respond to public comments or reflect a non-substantive variation from the proposed rules.

New subchapter D, Standards for Guardianship Programs, sets forth the minimum standards for local guardianship programs, which were developed with the advice of the Guardianship Advisory Board and input from providers of guardianship services, both public and private. Division 1 defines the new standards and addresses applicability and compliance with the standards. Division 2 concerns the administration and fiscal management of guardianship programs and addresses their organizational structure. Division 3 concerns management of guardianship program personnel. Division 4 addresses client services.

HHSC received several comments for the Texas Legal Services Center and one comment from HHSC staff.

The Texas Legal Services Center commented in favor of proposed rule §381.317, Fiscal Responsibility, but sought clarification of the financial rights of individuals sixty (60) years of age and older. The Commission agrees and has added to subsection (2) that a "person sixty (60) years of age or older has the right to review financial records and the right to an accounting, as set forth in §102.003(i) of the Human Resources Code."

The Texas Legal Services Center commented in favor of proposed rule §381.353, Training Requirements, but sought the inclusion of more information on advanced directives in the training requirement for guardianship programs. HHSC agrees with this comment. The purpose of the proposed rule is to ensure that all employees and volunteers of guardianship and related services programs are given all information that may be applicable to those persons receiving program services, in keeping with §602 of the Probate Code, which mandates that a guardianship shall encourage the development of maximum self-reliance and independence in an incapacitated person. HHSC has added "the general durable power of attorney, and advance directives under Chapter 166, Health and Safety Code" to the list of training topics.

The Texas Legal Services Center commented in favor of proposed rule §381.357, Referral, Intake, and Assessments, and sought an expansion of the list of potential referral sources that will receive information on how to make referrals to guardianship programs. HHSC agrees with this comment. The purpose of the proposed rule is to ensure that all employees and volunteers of guardianship and related services programs are aware of that program's referral acceptance and dissemination procedures. HHSC has expanded the list of entities to which guardianship programs will disseminate referral information by adding area agencies on aging, assisted living facilities, bar associations, legal services (legal aid) offices to subsection (a) of §381.357.

HHSC staff commented that §381.363, Evaluation and Monitoring of Caseloads, had inadvertently been misnumbered §381.3663 in the proposed version. HHSC has corrected the numbering.

The Texas Legal Services Center commented in favor of proposed rule §381.365, Personal Care Plans for Guardianship Clients, and recommended that the word "and" be inserted after the word "Physicians" in the first sentence of paragraph (5) of the rule. HHSC agrees with the concern and has revised the first sentence of paragraph (5) to clarify the procedure to address end of life decisions for those wards in the care of programs when this situation arises.

DIVISION 1. GENERAL

1 TAC §§381.301, 381.303, 381.305

The new rules are adopted under §531.033 Government Code, which provides the Commissioner of HHSC with broad rule making authority, and §531.124, Government Code, under which HHSC, with the advice of the Guardianship Advisory Board, is to adopt minimum standards for programs that provide guardianship and related services.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207160
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 21, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 424-6756

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DIVISION 2. ADMINISTRATION AND FISCAL MANAGEMENT

1 TAC §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325

The new rules are adopted under adopted under §531.033 Government Code, which provides the Commissioner of HHSC with broad rule making authority, and §531.124, Government Code, under which HHSC, with the advice of the Guardianship Advisory Board, is to adopt minimum standards for programs that provide guardianship and related services.

§381.317. Fiscal Responsibility.

A guardianship program has the following two distinct types of fiscal responsibility:

(1) Budget and Financial Functions. A guardianship program must maintain the fiscal standards required by its form of entity. All freestanding guardianship programs must follow generally accepted accounting principles and be able to produce proof that generally accepted accounting principles are followed. Guardianship programs that exist within the framework of a larger organization shall maintain the budget and financial functions required by funding sources and/or the larger organization's management.

(2) Clients. The fiscal responsibility of a guardianship program to its clients is governed by Chapter 13 of the Texas Probate Code and enforced by the court that appoints the guardianship program or its members to serve as guardian. A person sixty (60) years of age or older has the right to review financial records and the right to an accounting, as set forth in §102.003(i) of the Human Resources Code.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207161
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 21, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 424-6756

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DIVISION 3. PERSONNEL MANAGEMENT

1 TAC §§381.331, 381.333, 381.335, 381.337, 381.339

The new rules are adopted under adopted under §531.033 Government Code, which provides the Commissioner of HHSC with broad rule making authority, and §531.124, Government Code, under which HHSC, with the advice of the Guardianship Advisory Board, is to adopt minimum standards for programs that provide guardianship and related services.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207162
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 21, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 424-6756

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DIVISION 4. GUARDIANSHIP PROGRAMS AND CLIENT SERVICES

1 TAC §§381.345, 381.347, 381.349, 381.351, 381.353, 381.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367

The new rules are adopted under adopted under §531.033 Government Code, which provides the Commissioner of HHSC with broad rule making authority, and §531.124, Government Code, under which HHSC, with the advice of the Guardianship Advisory Board, is to adopt minimum standards for programs that provide guardianship and related services.

§381.353. Training Requirements.

A guardianship program will provide initial and ongoing training on guardianship and less restrictive alternatives for employees and volunteers. Training topics will include, but not be limited to, guardianship laws, disability and aging issues, medical treatment, medication issues, end of life decisions, housing alternatives, money management alternatives, case management techniques, the general durable power of attorney, and advance directives under Chapter 166 of the Health and Safety Code.

§381.357. Referral, Intake, and Assessments.

(a) Referral. A guardianship program will develop a procedure for accepting referrals and disseminating the referral information to local courts, hospitals, adult protective services, nursing facilities, area agencies on aging, assisted living facilities, bar associations, legal services (legal aid) offices, and other potential referral sources. Referral procedures must be designed to avoid situations in which the guardianship program will be referring clients to itself.

(b) Intake. A guardianship program will develop eligibility guidelines for the clients to whom services may be provided by the

guardianship program. A guardianship program will not accept any guardianship appointment or make any agreement to provide less restrictive alternative services that the guardianship program cannot handle or provide in a competent manner. Intake procedures will be designed to collect sufficient information to determine the least restrictive alternative available to the client and to proceed with the appropriate services as soon as possible.

(c) Assessment. As soon as possible after receiving a referral, a guardianship program will assess a client to determine the following:

(1) whether there is any immediate risk of abuse, neglect, or exploitation to the client;

(2) how the client's incapacity, if any, affects the client's ability to make reasonably prudent decisions;

(3) what limitation of the client's rights, if any, would be in the client's best interests;

(4) what powers a guardian would need to protect the best interests of the client; and

(5) what tasks need to be included in the care plan for the client.

§381.363. Evaluation and Monitoring of Caseloads.

A guardianship program will maintain procedures to monitor and evaluate its guardianship and less restrictive alternative services caseloads to insure that all its clients are receiving quality services. These procedures must include provisions for periodic interaction between supervisory staff and guardians, record keeping requirements, random audits of individual case records, interviews with clients and service providers, and other appropriate measures.

§381.365. Personal Care Plans for Guardianship Clients.

After a guardianship program or one of its members is appointed as a guardian of the person, the guardianship program will develop a care plan to address the client's personal needs.

(1) Guardian of the Person Care Plans. The care plan should address the powers, duties, and responsibilities given to the guardian of the person by the court's order appointing the guardian. If the court's order states that the guardian of the person has full authority, the care plan should address the powers, duties, and responsibilities given to the guardian of the person by section 767, Probate Code, Powers and Duties of Guardians of the Person, and other applicable sections of Chapter 13, Probate Code, concerning guardianships. The care plan may also include the following:

(A) monitoring services being provided to the client;

(B) providing appropriate clothing for the client;

(C) arranging for medical care, dental care, psychiatric care, and rehabilitation services as necessary;

(D) arranging for education and/or employment opportunities when appropriate;

(E) monitoring the nutrition of the client;

(F) obtaining safe and secure housing; and

(G) obtaining needed public benefits, if there is no guardian of the estate or other person charged with securing those benefits.

(2) Health Care Decisions. A guardianship program will develop a policy that generally describes the types of decisions that can be made by the guardian independently, the types of decisions that should be made only on the advice of two physicians or a psychologist licensed in this state or certified by the Texas Department of Mental Health and Mental Retardation, the types of decisions that should be made only with peer review, and the types of decisions that should be made only after obtaining an order from the court.

(3) Personal Visits. A guardianship program will establish a policy concerning the frequency of personal visits to be made by the guardian or the guardian's representative to the guardianship client. These periodic visits should include personal interaction with the client, if possible, monitoring for signs of abuse or neglect and, if applicable, checking facility charts and consulting with facility staff or other caregivers.

(4) Client Files. A guardianship program will maintain a file on each client that includes intake information, a current copy of the personal and/or financial care plan, a copy of any court orders or Letters of Guardianship, and a case note concerning client activities and concerns.

(5) End of Life Decisions. A guardianship program will include in its care plan whether the client has a Do Not Resuscitate document or Directive to Physicians and whether the client has ever expressed a preference regarding the use of extraordinary life sustaining measures. A guardianship program shall consult with legal counsel and the judges of courts with guardianship jurisdiction in its service area to develop a policy regarding end of life decisions. This policy should be communicated to all employees and volunteers of the guardianship program.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207163
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 21, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 424-6756

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.27

The Texas Historical Commission (hereafter referred to as the commission) adopts the amendment to §26.27 (Title 13, Part II, Chapter 26 of the Texas Administrative Code), relating to Disposition of Archeological Artifacts and Data, without changes to the text as published in the August 30, 2002 issue of the *Texas Register* (27 TexReg 8096).

Amendment is needed to eliminate a reference to a timeline and accreditation of curatorial facilities.

The Commission received no comments on this proposed amendment.

The amendment is adopted under the Texas Natural Resources Code, Title 9, Chapter 191, which provides the commission with the authority to promulgate rules that will reasonably effect the purposes of this chapter.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207156
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Effective date: November 21, 2002
Proposal publication date: August 30, 2002
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CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §§29.1 - 29.3, 29.5

The Texas Historical Commission (hereafter referred to as the Commission) adopts the creation of new Chapter 29, §§29.1 - 29.3, and 29.5, as part of Title 13, Part 2 of the Texas Administrative Code. Section 29.5 is adopted with changes to the text as published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7686). Sections 29.1 - 29.3 are adopted without changes and will not be republished.

The Commission has a legal responsibility to oversee the custody, care, and condition of historic collections owned by the State of Texas and under the authority of the Commission which includes permitted collections, Commission generated collections, donated collections, and court-action collections. This responsibility includes ensuring that collections are placed in appropriate curatorial facilities and that such facilities provide appropriate care for these items. For a curatorial facility to be designated to receive held-in-trust state-associated collections, such institutions must be certified by the Commission. These purposed rules provide a method to select appropriate facilities through an orderly, objective certification process.

The Commission currently does not have a comprehensive list of its collections, including contents, location and condition. The certification process will require each curatorial facility wanting to continue to receive collections to provide to the Commission the above information, as well as demonstrating sound collection management practices and appropriate facilities. The procedures to implement the program and the detailed standards will be developed as the next step in a continuing process to upgrade the care and management of the State's collections.

Comments on the proposed rules were received from the Texas Department of Transportation (TxDot), the Texas Parks and Wildlife Department (TPWD), the Texas Archeological Society, the University of Texas at Austin, and the University of Texas at San Antonio (UTSA). Since many of the comments were similar, they will be grouped for response.

Inventory

The Texas Department of Transportation commented on §29.3 (16) of the rules, the definition of inventory, that states that inventory is "a physically-checked, itemized list" and that this "will require the repository to verify the presence/absence of each object that TxDoT submits for curation. Since TxDoT frequently submits hundreds of thousands of individual objects, the repository will expend substantial periods of time (possibly weeks) checking the collection's inventory at the time of submittal. Since the department or our consultants inventory the collections prior to submittal, this physical check is redundant and duplicates costs to TxDoT."

Response: The Commission disagrees with the comment. The definition does not require that the inventory be duplicated. If the inventory that is performed by the consultant or department is considered adequate, it need not be duplicated. It would be good practice for the curatorial facility to check a sample of items against the inventory to verify its accuracy if a full inventory is not possible or impractical due to the size of the collection.

The University of Texas at Austin also commented on this section. It states, "inclusion of the term 'physically-checked' may well require additional costs to repositories when they accession affected archeological collections." They further request that a sampling procedure be allowed for checking incoming collections to verify the presence of the objects in the collection.

Response: See above. Further, for existing collections, there must be some type of inventory, and the best practice is that the inventory be verified periodically. The rules, however, do not specifically require this. As long as there is a baseline inventory that accompanied the collection when it was accessioned into the curatorial facility, that will meet the minimum standard.

The University of Texas at San Antonio also commented on this section. It states, "... it has been agreed that 'existing' inventories, where available, will be adequate for baseline inventories. We would like to have the term 'existing inventories' added to the language to clearly indicate that where such inventories exist they will be sufficient for the purposes of the rules." The baseline inventories will place an unjust financial burden on existing curatorial facilities.

Response: See above. The Commission disagrees with the comment because it considers that the definition of "baseline inventory" is clear as it currently exists in the rule at §29.3 (4). Further, the response to the comments gives clear evidence of the intention of the Commission to interpret the definition as including the existing inventories. The Commission also disagrees that the rule pertaining to inventories will place a financial burden on the curatorial facilities. All curatorial facilities should have a baseline inventory of each collection that accompanied it when it was accessioned. A facility that does not maintain even this minimal inventory for each collection is unlikely to even apply for certification.

Packaging of Collections

The Texas Department of Transportation commented on §29.5 (d) (ii) and 29.5 (e) (N) of the rules, concerning packaging of objects in collections. It states, "These two items require that collections be placed in proper packaging. For new collections and collections submitted to repositories during the past five years, this is a reasonable request. However, many collections governed by these rules were placed in curatorial facilities over 30 years ago. Often those older collections have hundreds of thousands of artifacts. If those facilities were required to re-package collections older than five years, the costs would be staggering."

Response: The Commission disagrees with the comment because the rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Whether that standard will require that packaging for 30-year-old collections be upgraded to current standards is a decision that has not been made and is not specifically addressed in the rules. Some standard will be applied to packaging, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Further, packaging is not necessarily permanent. Items that have been in the same packaging for 30 years frequently will require repackaging because of deterioration of the original packing materials.

Fiscal Note

The Texas Parks and Wildlife Department commented on the Fiscal Note of the Rules. They state: "These proposed rules will directly impact the cost of curating collections generated under Texas Antiquities Permits on state lands and will therefore impact all state and local governments who sponsor archeological investigations."

The Texas Archeological Society also commented on the Fiscal Note: "The preamble to Chapter 29 is misleading when it states that there may be fiscal implications for state and local governments. The substantial costs of meeting these new standards (e.g., fire suppression systems and other improvements) will be passed on to state and local governments."

Response: The Commission disagrees with the comments, although it acknowledges that there are costs involved in the process, and so stated in its Fiscal Note. The Commission stated that curatorial facilities would incur costs if becoming certified required upgrading of facilities. The Comments appear to assume that the costs of upgrading facilities will be passed along to state and local governments who sponsor archeological investigations. That is an assumption that the Commission is unwilling to make. There are other sources of funds to upgrade these facilities, including grant funds, appropriated funds, and the shifting of other funds within the institution. As was stated in the Fiscal Note, " The lack of information concerning what improvements may need to be made makes it impossible to estimate actual costs for curatorial facilities that decide to become certified." Similarly, if one assumes that the costs of certification will be passed on to the permit holders, there is not sufficient data to determine how much of an increase there would be in the costs.

Cost of the Program

The University of Texas at Austin commented concerning the costs of the program: "First, we believe that even this version of the proposed rules will result in substantial costs to several components of The University of Texas System, including The University of Texas at Austin. These costs relate primarily to upgrades that would be required in the buildings housing archeological collection under the legal custodianship of the Texas Historical Commission. We believe it appropriate to amend the rules so that they take effect only after the Texas Legislature appropriates funds for the necessary upgrades, or in the alternative, make them contingent upon obtaining funding."

Response: The rules do not guarantee that each and every curatorial facility in the State will achieve certification. Each institution must evaluate its own situation and determine whether it has the funding and determination to achieve certification, and how long it will take to achieve it. The program is voluntary. The rules allow curatorial facilities until December 31, 2005 to achieve at least provisional certification in order to continue to receive state-associated held-in-trust collections. Once provisional certification is achieved, a period of as much as six years may be taken to remedy deficiencies in the facilities program. It is the opinion of the Commission that most institutions should be able to achieve the standards in that period. With respect to making the rules contingent on funding by the Legislature, it would appear that the Commenter is asking the Commission to place a mandate on the Legislature rather than on curatorial facilities. This would exceed the authority of the Commission. It could also ensure that the goal of the program is never achieved.

"Retroactivity" of Rules

The University of Texas at Austin commented as follows: "...we consider it critical that §29.5(e) Application of Criteria, items 1B, 1C, and 1D be amended to indicate that they specifically apply only to collections deposited after December 31, 2005. As currently written, these items still are retroactive (and therefore contrary to applicability statements elsewhere in the rules...."

Response: The Commission disagrees with the Comment. The intent of the certification program is not only to ensure that artifacts collected in the future receive the appropriate level of care, but also to enhance the level of care given to existing collections. The Commission's fiduciary responsibility extends to all of the collections, regardless of when they were generated. The Commission does intend that the rules apply to the existing collections. The Commission has not attempted to mandate that all curatorial facilities increase the level of care of all state-associated held-in-trust collections. It has determined that it should encourage responsible stewardship by limiting the placement of future collections to institutions that meet certification standards. The Commission considers that this is within its legal authority and appropriate to its role as custodian of the antiquities of the State.

Undefined and Ambiguous Terms

The University of Texas at Austin comments as follows: "...we continue to believe that terms such as 'inadequate' and 'substandard' as used in §29.5 (e) are not defined and are too ambiguous. Terms such as 'functional' and 'usable' would be more appropriate. Repositories need specific, objective criteria by which they and others can evaluate the adequacy of their facilities in terms of possible certification."

The Texas Parks and Wildlife Department also made similar comments: "The criteria for certification listed under §29.5(d)(4) appear to be categories, rather than specific criteria." "Many terms ... are vague, indefinable, and could be subject to much interpretation...." The Texas Archeological Society sent a similar comment: "The criteria for certification in §29.5 (d) are vague, employing terms like 'clear', 'sound', 'adequate', and 'appropriate'. We recommend that explicit certification criteria are established...."

The University of Texas at San Antonio made a similar comment. The language is referred to as "vague" and "imprecise." The comment requests "that as much precision and specificity as possible be inserted into the document so that it can be uses as a very clear guideline for facilities seeking certification...."

Response: The Commission disagrees with the comments because the rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Timeline

The Texas Archeological Society commented that the "certification procedure described in §29.5 (b) has no explicit timeline. THC review and response periods must be stated and incorporated into these rules. Uncertainty about the length of the certification procedure could prevent repositories from becoming certified by December 31, 2005, as required by §29.5 (a) (3)."

Response: The Commission agrees that the certification process should have timelines. There are significant variations in the curatorial facilities in the State, and the time required to complete the process for certification may vary according to the size and complexity of the facility. Nonetheless, general timelines based on general categories will be established. These timelines will be considered as the detailed procedures of the certification process are developed and adopted.

Application of Criteria

The University of Texas at Austin commented on the application of the specific criteria, in particular, requesting that environmental controls be combined with "appropriate physical facilities" in both the deficiency factors and the disabling factors.

Response: The Commission disagrees with the comment. The criteria address two distinct issues, and each should be given weight in the evaluation of the facility.

The University of Texas at San Antonio commented on §29.5 (e)(2)(C). The comment was that incomplete held-in-trust agreements for state-associated collections would be considered a disabling factor. This form has not been in use until recently. The current version of the agreement has been through at least two drafts, it is not currently standard documentation sent to curation facilities by the Commission. "Therefore, it would seem premature to include this requirement in the list of disabling factors."

Response: The Commission disagrees with the comment because the Commission needs the formal transfer of stewardship that is reflected in the held-in-trust agreements and the baseline inventories that go with those agreements.

Application of Federal Standards

Comments were received from the University of Texas at Austin, the Texas Parks and Wildlife Department, and the Texas Archeological Society suggesting that the Curation of Federally-Owned and Administered Archeological Collections, 36 C.F.R. §79, be used, all or in part, as standards for the certification of curatorial facilities.

Response: The Commission disagrees with the comments. While the federal standards do provide a useful starting point for the development of State standards, they are not adequate to address all of the issues that must be addressed for the care of artifacts in Texas. They will certainly be considered as the Commission develops standards, as will the standards of the American Association of Museums and the Accreditation Review Council of the Council of Texas Archeologists. It is not the intent of the Commission to depart from prevailing practices, but it is the goal of the Commission to have standards that will ensure long-term preservation of the antiquities of Texas.

Ownership of Artifacts by Local Governments

The University of Texas at San Antonio comments that cities and counties across the state generally file forms with the curatorial facility evidencing a "transfer of custodianship" but attempting to retain ownership in the local governmental entity. They see a clash between the state and local governments and do not want to "become unwilling participants in this dispute."

Response: The Commission does not believe that there is a dispute in this area. Texas Attorney General's Opinion No. JC-0465 (2002) states that the Legislature has the power to, and did, make artifacts found on land belonging to local governments state property. Any documentation to the contrary from a local government is void.

Other Comments

In addition to the above comments, the following additional comments were received from the Texas Parks and Wildlife Department:

"The review and evaluation process is not standardized: review and certification responsibilities shift from THC field reviewers to the staff, executive director, and/or commission in the course of the certification process. TPWD recommends that a single THC point of contact be assigned to guide and complete the certification process."

Response: The Commission disagrees with the comments, to the extent that we are sure we understand them. Each curatorial facility will be working with a designated individual throughout the process in order to avoid confusion as to who to contact. If that is the meaning of the comment, this will be taken care of. On the other hand, the decision making process will involve progressively higher levels of the staff and ultimately the Commission for final decisions on certification. Such crucial decisions will not be made by staff.

"The rules for provisional status are more lenient than certification with disabling or deficiency factors. Provisional status allows facilities to apply for multiple extensions, allows the commission to vote on certification, and allows facilities to reapply for certification if denied. Facilities granted certification with disabling or deficiency factors must address these problems by the end of the certification period or forfeit subsequent certification."

Response: The Commission disagrees that the provisions for provisional status are inappropriately more lenient than certification with disabling or deficiency factors. A facility is certified for a period of ten years, and would have that period to correct any deficiencies unless a shorter period were specified by the Commission. Provisional certification, with all allowed extensions, is for a period of six years. The monitoring and corrective action on a facility that is granted provisional certification is intended to be more rigorous, to ensure corrective action is taken at the earliest possible time.

"Not all collections generated under antiquities permits are owned by the state (e.g., collections generated from State Archeological Landmarks on private property). Only collections generated under antiquities permits on state lands are subject to the proposed rules."

Response: The comment is incorrect. Reference to the definition of "state associated collection" shows that these collections are limited to those found on or recovered from public land.

"A definition for disabling and deficiency factors should be included."

Response: The Commission disagrees with the comment, because no purpose would be served by attempting to define these terms. They operate functionally to describe the various conditions that may lead to a curatorial facility not being certified. Distinctions will be made between disabling and deficiency factors in the guidelines to be developed.

"29.5(a)(3)(B) All collections generated under antiquities permits on state lands issued after December 31, 2005."

Response: The Commission agrees in part with the comment, although collections generated on land belonging to local governmental entities are included. The rule is amended to add on public lands.

"29.5 (a)(8) Staff of the Commission shall develop procedures to begin the review of applicants at the earliest possible date. When will these procedures become available? These procedures should become part of the Rules of Practice and Procedure for the Antiquities Code of Texas."

Response: The Commission must hire staff and begin development of the procedures as soon as possible after the rules are adopted. It is not possible to accurately predict a date for completion of the procedures at this time, but maximum effort will be given to this project.

"29.5 (b)(1)(C) and 29.5 (b)(2)(F) The executive director may determine that the certification review should be terminated at this point in the process. Under what circumstances would the executive director terminate the process?

Response: The executive director would terminate the process in accordance with §29.5 (b)(1)(C) if he determined that the facility did not meet the definition of "curatorial facility" contained in §29.3 (11) of the rules. The executive director would terminate the process in accordance with §29.5 (b)(2)(F) if he determined that the information provided on the self-evaluation was so deficient that there was no chance that the facility would be approved and, thus, no need to proceed with a field review. This decision is subject to appeal.

"29.5 (b)(2)(A) No time frame is defined for THC to send the certification review packet. Full review should be defined."

Response: This information will be sent expeditiously, but the Commission does not see the reason for placing a deadline on every ministerial action of the Commission staff, such as mailing information.

"29.5 (b)(2)(B) The self-evaluation and other materials must be submitted to the commission within six months of receiving the certification review packet."

Response: The Commission generally agrees with this comment, although the Commission will not know the date of receipt of the package unless it is sent return receipt requested. The date of mailing will be substituted, with a provision for extension if there is undue delay in receipt of the package.

"29.5 (b)(2)(C) 29.5 (a)(8)(b)(1)(B) 29.5 (b)(3)(B) and 29.5 (b)(3)(C) Commission and staff review at various times. The procedure is unclear.

Response: The Commission disagrees that this procedure is unclear. As the initial reviews take place, there may be questions and changes in the details of the procedures, as in many new ventures. The Commission staff will be available to explain exactly what is expected of applicants and what the staff will be doing.

"29.5 (b)(3)(E) Does the THC have a deadline for submitting the report of the on-site evaluation?"

Response: As the Commission staff initiates this process, reasonable periods shall be established for the completion of the various phases of the work. Utmost care will be taken to ensure that the process is not delayed by staff and that no facility's certification is put in jeopardy by staff delay.

"29.5 (b)(3)(G) Will the commission consider this at the next quarterly meeting?"

Response: Each individual agenda is subject to the determination of the Chair as to the appropriateness of any item. The Commission will ensure that the certification of facilities is considered expeditiously, but individual decisions may depend on a number of factors.

"29.5 (b)(4)(A) Will the commission consider this at a separate/prior meeting or at the same quarterly meeting? Will the Antiquities Advisory Board have a chance to review the applications?

Response: The Commission would normally consider the matter at the same quarterly meeting as the committee meeting. It will be up to the committee to make a recommendation that a particular application be heard by the Commission, and there is no guarantee that each application will get a positive recommendation. The Commission does not currently anticipate that the Antiquities Advisory Board will review these applications.

"29.5 (b)(4)(B) Will this decision be made at the next quarterly meeting?"

Response: Each individual agenda is subject to the determination of the Chair as to the appropriateness of any item. The Commission will ensure that the certification of facilities is considered expeditiously, but individual decisions as to when matters are heard may depend on a number of factors.

"29.5 (b)(4)(C) What are the matters properly submitted? Where are the standards for certification described?"

Response: "Matters properly submitted" would include all items submitted in the review process, either from the staff or the applicant, and testimony and documents submitted during the review process. It is intended to exclude inappropriate, "back door" attempts to influence the decision of the Commission. The "standards for certification" are the standards that will be developed by the staff and approved by the Commission to guide the detailed examination of applicants.

"29.5 (b)(4)(C)(ii)(III) Three or fewer disabling factors and five or six [disabling] deficiency factors, provisional status granted: or"

Response: This correction has been made. "29.5 (b)(4)(D) Who conducts the monitoring? If a curatorial facility is certified with disabling or deficiency factors and does not address the problems by the end of the certification period, then the curatorial facility can never be certified?

Response: The monitoring will be conducted by Commission staff. If a facility does not correct disabling or deficiency factors, there will be loss of certification for a period of time, but the

Commission agrees that the facility should not be permanently disqualified. The rule is amended to provide that the facility may reapply not earlier than two years following the expiration of their certification to reapply and all previous deficiencies and disabling factors must be corrected.

"29.5 (b)(4)(E)(i) No time frame is provided for submitting plans. Is this done at quarterly meetings of the commission?

Response: Any plan submitted will have to be reviewed by staff before being considered by the Commission. The sooner the plan is submitted, the sooner the Commission can review it. Staff will be available to work with the applicants to develop plans.

"29.5 (d)(2) What are the criteria that shall be in writing and shall be made available to any person requesting them?

Response: The criteria are listed in §29.5 (d)(4). The "standards for certification" will be the guidelines for the application of the criteria and will be developed by the staff and approved by the Commission to guide the detailed examination of applicants.

In addition to the previously-listed comments, the University of Texas at San Antonio made the following comments:

Section 29.5 (d)(4)(A)(i): How specific does the mission statement have to be?

Response: The Commission disagrees with the comment to the extent that it implies that the rules should answer all of the questions about the criteria listed. The rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Section 29.5 (d)(4)(A)(ii): "It is unclear whether the institution refers to the Center for Archaeological Research or The University of Texas at San Antonio."

Response: The information requested refers to the curatorial facility itself. The Commission does not intend to evaluate universities.

Section 29.5 (d)(4)(B)(i): Does the reference to a "clear fiscal plan" refer to the "CAR or UTSA?"

Response: The information requested refers to the curatorial facility itself. The Commission does not intend to evaluate universities.

Section 29.5 (d)(4)(B)(iii): Does "continued efforts to raise level of support" mean one grant a year or three or more grant proposals per year?

Response: The Commission disagrees with the comment to the extent that it implies that the rules should answer all of the questions about the criteria listed. The rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Section 29.5 (d)(4)(C): To what degree must a written collections management policy address each topic?

Response: The Commission disagrees with the comment to the extent that it implies that the rules should answer all of the questions about the criteria listed. The rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Section 29.5 (d)(4)(C)(xii): The comment asks how the requirement for "adequate and appropriate insurance" will be applied to state institutions that are self-insured.

Response: The Commission agrees that state institutions would not be expected to purchase insurance when state law and/or policy forbid it. This provision would be applicable to private institutions.

Section 29.5 (d)(4)(C)(xiii): How could appraisals be obtained when it is a violation of professional ethics for archeologists to appraise collections, and there do not seem to be professionals available who will appraise such collections?

Response: The collections management policy should address appraisals in the manner specified above, in that the Commission agrees that appraisals are ethically inappropriate for these types of collections and this should be so stated.

Section 29.5 (d)(4)(E)(i): What constitutes a sound and appropriate structure?

Response: The Commission disagrees with the comment to the extent that it implies that the rules should answer all of the questions about the criteria listed. The rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Section 29.5 (d)(4)(E)(iii): What is appropriate "fire prevention?"

Response: The Commission disagrees with the comment to the extent that it implies that the rules should answer all of the questions about the criteria listed. The rules are intended to denote the criteria that will be used and not establish the exact standards that will be applied. The certification program is just beginning a process that will lead to a system to evaluate and certify individual facilities. The Commission must hire staff and develop the detailed standards that will be applied in evaluation of facilities. Standards will be applied to each of these areas, but these rules do not determine what that standard will be. Further opportunity for comment will be afforded to the prospective applicants for certification when the standards are developed.

Section 29.5 (d)(4)(F)(i)-(iii): Do these refer to the existing code of ethics, personnel policy, and job descriptions in place by the University or to the CAR?

Response: The information requested refers to the curatorial facility itself. The Commission does not intend to evaluate universities. However, if these University policies apply fully to the curatorial facility, they may be adequate to meet the requirements of the rules.

Section 29.5 (d)(4)(G)(ii): Does the requirement for an "updated and current list of held-in-trust state-associated collections" apply to the THC list or CAR's list, where there is a difference between the two.

Response: Part of the problem in this area is that collections have been placed in curatorial facilities without providing notice to the Commission. Therefore, the Commission's list is incomplete, and one goal of the rules is to establish what is in the state-associated held-in-trust collections and where they are located. Accordingly, it is CAR's list that should be updated and current.

The new chapter is adopted under Chapter 442 (§442.005(q)), Title 13, Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of this chapter.

The replacement language also implement Chapter 442 (§§442.005(b), 442.009(r), 442.007(c) and 442.007(e)) of the Texas Government Code.

§29.5. Certification of Curatorial Facilities for State-Associated Held-in-Trust Collections.

(a) Establishment of certification program.

(1) The Commission shall determine through the program established by this subchapter appropriate facilities to house state-associated held-in-trust collections generated or purchased by the Commission, generated through antiquities permits issued under the authority of the Commission as provided by the Texas Natural Resources Code, Chapter 191, donated to the Commission, or placed with the Commission through the order of a court.

(2) The certification process shall consider the management and care of all state-associated collections at the curatorial facility.

(3) The requirements of this subchapter related to the placement of state-associated collections in certified curatorial facilities shall apply to the following:

(A) All collections placed in curatorial facilities by the Commission after December 31, 2005; and,

(B) All collections generated under antiquities permits on public lands after December 31, 2005.

(4) No collection or any component of a collection as described under the jurisdiction of this subchapter may be placed in a curatorial facility that is not certified through the process established by this section.

(5) This section does not apply to the placement of collections in curatorial facilities prior to the effective date of this requirement as specified in subsection (a)(3), above. It does apply to any subsequent transfer of collections or a component of a collection taking place after the effective date of this requirement as specified in subsection (a)(3)(A)-(B), above.

(6) This section does not apply to the temporary loan of a collection or a component of a collection.

(7) Certification shall be effective for a period of ten years, after which time, the curatorial facility must apply for renewal through the procedures provided in this subchapter. Renewal will be based upon the standards for certification in place at the time renewal is requested.

(8) The certification process shall be implemented upon the effective date of these rules, and the staff of the Commission shall develop procedures to begin the review of applicants at the earliest possible date. The requirement that all new collections shall be placed only in certified curatorial facilities shall be effective as specified in subsection (a)(3)(A)-(B), above.

(b) Procedures for Certification.

(1) Application. A curatorial facility seeking certification from the Commission shall apply to the Commission on a form provided by the Commission.

(A) The form shall require the applicant to provide essential information and documentation to allow the Commission to determine whether the facility is a curatorial facility within the definition of that term.

(B) Staff of the Commission shall evaluate the application and make a recommendation to the executive director on whether the facility should be allowed to proceed with the certification process.

(C) The executive director may determine that the certification review should be terminated at this point in the process.

(2) Submission of written materials for certification.

(A) A curatorial facility approved for full review will be sent a certification review packet including a self-evaluation to be performed by the curatorial facility and other information concerning requirements for the certification process.

(B) The self-evaluation and other materials must be submitted to the Commission within six months after the certification review packet is mailed.

(C) The completed documentation shall be reviewed by the Commission. If clarification or additional information is requested by the Commission, the facility shall have 30 days to furnish the information required.

(D) Failure to provide the requested information or inadequacy of the materials provided may lead to the termination of the review process.

(E) Staff of the Commission shall review the self-evaluation and other written materials provided and make a recommendation to the executive director on whether the facility should be allowed to proceed with the certification process.

(F) The executive director may determine that the review should be terminated at this point in the process.

(3) Field review.

(A) A curatorial facility that has submitted its self-evaluation and other written materials and approved to proceed with the certification process shall be contacted to arrange for a field review.

(B) At a time to be agreed upon by the Commission staff and the facility, an on-site evaluation of the facility shall be conducted by the Commission.

(C) Field review of the curatorial facility will be conducted by qualified staff of the Commission.

(D) An applicant for certification must make their facilities and records freely available to the field reviewers of the Commission in order to be considered for certification.

(E) Upon completion of the on-site evaluation, the persons performing the evaluation shall complete a written report of the on-site evaluation.

(F) The written report and recommendation shall be submitted to the executive director for his review. The executive director may approve, disapprove, or amend the recommendation.

(G) The applicant shall be provided notice of the Commission meeting when its application will be considered and provided a copy of the executive director's recommendation.

(4) Consideration by the Commission.

(A) The Commission may direct that this matter be considered in a committee of the Commission prior to consideration by the full Commission.

(B) The Commission shall consider the recommendations of the staff and/or executive director and all other matters submitted or prepared in connection with the application and shall make a decision on the certification of the curatorial facility. The decision of the Commission shall be provided in writing to the curatorial facility. If certification is denied, the Commission shall provide reasons for the denial to the curatorial facility.

(C) The decision of the Commission shall be based on the matters properly submitted in the certification process, and the decision shall measure the qualifications, stated objectives, and resources of the curatorial facility against the standards for certification established by the Commission.

(i) The Commission shall consider the evaluation of the curatorial facility and determine which, if any, disabling and deficiency factors may be present in the curatorial facility.

(ii) The Commission shall grant certification of the curatorial facility based on the disabling and deficiency factors by the following standards:

(I) Four or more disabling factors, certification denied;

(II) Three or fewer disabling factors and no more than four deficiency factors, certification granted;

(III) Three or fewer disabling factors and five or six deficiency factors, provisional status granted; or

(IV) Three or fewer disabling factors and seven or more deficiency factors, certification denied.

(D) If a curatorial facility is certified with existing disabling factors or deficiencies, a monitoring process will assure that these problems are rectified before subsequent certification can take place. If these factors have not been addressed by the end of its certification period, then the curatorial facility will be decertified at the end of the certification period. The curatorial facility must wait two years before reapplying for certification, at which time it will be certified only if it has corrected all prior deficiency and disabling factors.

(E) Provisional status.

(i) If the Commission determines that the curatorial facility does not meet all of the qualifications for certification, but should be granted provisional status, the curatorial facility must submit a plan and schedule for correcting the problems to the Commission within 90 days of the approval of provisional status. The Commission shall consider the plan and schedule and either approve it or return it to the curatorial facility with suggested revisions. The curatorial facility shall resubmit the plan and schedule until approved by the Commission. If such problems are corrected and appropriate evidence of such correction is presented to the Commission, the Commission may grant certification to the curatorial facility at the next succeeding quarterly meeting of the Commission.

(ii) A curatorial facility that is granted provisional status shall be considered as a certified curatorial facility unless it subsequently fails to correct the disabling and deficiency factors within the time allotted, at which time the Commission may vote to deny certification.

(iii) Provisional status shall initially be granted for a period of three years. The period may be extended for up to three one-year increments by the Commission if the curatorial facility is determined to be making progress in remedying the disabling and deficiency factors. Provisional status may not be extended beyond the six-year limit. Each extension will require justification and a vote of the Commission.

(F) Except as provided by this subchapter, a curatorial facility that is denied certification by the Commission may not reapply for certification within one year of the denial of its application.

(c) Appeal.

(1) If the executive director has determined that the review of an application for certification of a curatorial facility should be terminated prior to field review, the curatorial facility may appeal that decision to the Commission by requesting in writing a review of the decision at the next succeeding quarterly Commission meeting, provided that such request must be received not less than 30 days prior to the meeting. The curatorial facility and the executive director may submit arguments in writing to the Commission concerning the appeal.

(2) If the executive director and/or staff recommend against certification of a curatorial facility, the facility may respond in writing to such recommendation. If the curatorial facility determines that it needs additional time to respond to the staff and/or executive director's recommendation, it may request that the consideration of the certification be delayed until the next succeeding quarterly meeting, and shall submit its response not less than 30 days prior to the next succeeding quarterly meeting. Only one such delay in the consideration of certification shall be granted, except on vote of the Commission.

(3) The staff or the executive director may comment on any response of the curatorial facility.

(4) Except as may otherwise be provided by law, the decision of the Commission on certification of a curatorial facility is final.

(d) Criteria for Certification.

(1) The Commission shall develop and adopt objective criteria for the evaluation of curatorial facilities.

(2) The criteria shall be in writing and shall be made available to any person requesting them.

(3) The evaluation shall focus on the care and management of all state-associated held-in-trust collections present at the facility.

(4) The following certification criteria will be used to evaluate curatorial facilities:

(A) Governance.

(i) specific mission statement;

(ii) institutional organization document; and

(iii) evidence of not-for-profit status.

(B) Finance.

(i) clear fiscal plan;

(ii) financial reporting system, with an external audit; and

(iii) continued efforts to raise level of support.

(C) Policies. Written collections management policies addressing:

(i) acquisitions;

(ii) scope of collections;

(iii) legal title;

(iv) held-in-trust agreements;

(v) contract of gift;

(vi) accessioning;

(vii) deaccessioning and disposal of collections or collection items;

(viii) cataloging;

(ix) loans;

(x) destructive loans of held-in-trust collections;

(xi) inventory;

(xii) adequate and appropriate insurance;

(xiii) appraisals;

(xiv) access to collections;

(xv) record keeping;

(xvi) collections care;

(xvii) conservation;

(xviii) disaster management;

(xix) pest management; and

(xx) security.

(D) Procedures. Written collections management procedures addressing:

(i) acquisitions;

(ii) accessioning;

(iii) deaccessioning and disposal of collections or collection items;

(iv) documentation;

(v) cataloging;

(vi) loans;

(vii) destructive loans of held-in-trust collections;

(viii) inventory;

(ix) environmental control (lighting, temperature, relative humidity, air particulates);

(x) conservation assessment;

(xi) housekeeping;

(xii) cleaning, packaging, and housing of collections;

(xiii) packing and shipping of collections;

(xiv) access to collections;

(xv) written disaster management plan addressing:

(I) accidents;

(II) fire;

(III) flood; and

(IV) other natural disasters;

(xvi) written pest management plan; and

(xvii) written security plan.

(E) Physical Facilities.

(i) sound, appropriate structure;

(ii) adequate and appropriate insurance;

(iii) security system;

(iv) fire prevention, detection, and suppression programs; and

(v) environmental controls (temperature, relative humidity, air particulates).

(F) Staff.

(i) written code of ethics;

(ii) written personnel policy;

(iii) written job descriptions;

(iv) minimum one full-time staff member trained in collections care; and

(v) support for staff training programs in collections care and memberships to museum-related organizations.

(G) Visiting scholars and researchers.

(i) written policy concerning access to collections; and

(ii) written procedures concerning security, access, and handling of collections.

(H) Records management.

(i) functional accession, catalog, inventory, and photo documentation system;

(ii) updated and current list of held-in-trust state-associated collections; and

(iii) baseline inventory of held-in-trust state-associated collections.

(I) Collections care.

(i) housing;

(I) current floor plan;

(II) appropriate housing units with adequate and appropriate space; and

(III) accessible and organized collections;

(ii) packaging;

(I) appropriate materials;

(II) appropriate object spacing; and

(III) appropriate organization of collections.

(e) Application of criteria. In making the determination of certification status, all of the above criteria are considered. In particular, at the Application stage, the curatorial facility must fit the definition; have a mission statement, a statement of purpose, and a scope-of-collections statement; and have a written collections management policy. If the curatorial facility does not meet these three basic criteria, then certification is denied and the process goes no further. At the Commission level, disabling factors could prevent certification. Deficiency factors could result in provisional status or denial. Where appropriate, the criteria for evaluation for curatorial facilities to be developed by the commission will contain objective standards against which disabling and deficiency factors are measured.

(1) Disabling factors are the absence of any of the following:

(A) written procedures and plans;

(B) written held-in-trust agreements for state-associated collections;

(C) list of held-in-trust state-associated collections;

(D) baseline inventory for each held-in-trust state-associated collection;

(E) record keeping system;

(F) accession system;

(G) catalog system;

(H) inventory system;

(I) environmental controls (temperature, relative humidity, air particulates);

(J) fire prevention, detection, or suppression programs;

(K) full-time employee trained in collections care;

(L) appropriate physical facilities; and

(M) appropriate housing or housing conditions.

(2) Deficiency factors are the following:

(A) substandard policies;

(B) substandard procedures and plans;

(C) incomplete held-in-trust agreements for state-associated collections;

(D) incomplete list of held-in-trust state-associated collections;

(E) incomplete baseline inventory for each held-in-trust state-associated collection;

(F) inadequate record keeping system;

(G) inadequate accession system;

(H) inadequate catalog system;

(I) inadequate inventory system;

(J) substandard environmental controls (temperature, relative humidity, air particulates);

(K) substandard fire prevention, detection, or suppression programs;

(L) substandard physical facilities;

(M) substandard housing or housing conditions; and

(N) substandard packaging.

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 November 1, 2002.

TRD-200207158
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: November 21, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 463-5711

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 37. LEGAL

SUBCHAPTER B. PENALTIES

16 TAC §37.60

The Texas Alcoholic Beverage Commission adopts amendments to §37.60 with changes to the text as originally published in the September 13, 2002, edition of the *Texas Register*, (27 TexReg 8695). This rule relates to administrative sanctions imposed on certain businesses regulated by the commission. Section 106.14 of the Alcoholic Beverage Code requires the commission to adopt rules to establish standards for seller training programs attended by alcoholic beverage vendors. These rules are contained in 16 T.A.C. Chapter 50. The adopted amendments establish standard administrative penalties for violations of these rules.

The commission concluded that both regulated business and agency staff are better served by the establishment of clear guidelines for the imposition of administrative sanctions in that such sanctions can better serve as a deterrent to future violations and be more consistently applied.

There were no comments to these proposed amendments.

The words "compliance and licensing" in subsection (e) of the rule as originally published were changed to "the regulatory division" to reflect a change to the name of that portion of the agency.

This rule is adopted under the authority of §5.31 and §106.14 of the Alcoholic Beverage Code, which gives the commission the authority to publish rules necessary to regulate seller training schools.

Cross Reference: Section 106.14 of the Alcoholic Beverage Code is affected by this rule.

§37.60. Standard Penalty Chart.

(a) Agents, compliance officers or other specifically designated commission personnel may offer settlements to persons charged with violating the provisions of the Alcoholic Beverage Code or rules of the commission. Settlement of those cases, unless otherwise

provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart.
Figure: 16 TAC §37.60(a)

(b) Each suspension of a permit or license shall run for consecutive days. An alcoholic beverage licensee or permittee penalized by the commission may pay a civil penalty in lieu of a suspension as provided by Alcoholic Beverage Code, § 11.64, but no licensee or permittee may pay a civil penalty in lieu of a fraction of its suspension. In other words, any penalty assessed must be either a suspension or a civil penalty, but not a combination of both.

(c) A repeat violation by a licensee or permittee justifies the penalty for a second or third violation if it is a health, safety and welfare violation and occurs within 36 months of the first violation and if it is a major regulatory violation within 24 months of the first violation.

(d) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the permittee or licensee, as those terms are defined in the Texas Alcoholic Beverage Code, § 1.04(11), has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a permittee or licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the permittee or licensee.

(e) The list of violations in the standard penalty chart is not an exclusive list of violations of the Texas Alcoholic Beverage Code or rules of the commission. The administrator or his designee is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by either the chief of enforcement or the director of the regulatory division prior to its assessment.

(f) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if aggravating or mitigating circumstances are involved. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the administrator or his designee.

(g) The standard penalty chart does not bind a hearing examiner, the administrator, or his designee as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

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 31, 2002.

TRD-200207143
Rolando Garza
Administrator
Texas Alcoholic Beverage Commission
Effective date: November 20, 2002
Proposal publication date: September 13, 2002
For further information, please call: (512) 206-3204

TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment (council) adopts the amendments to §§810.3-810.5, 810.7, 810.9, 810.61-810.64, 810.92, 810.122, and 810.153 concerning the certification of registered sex offender treatment providers. Sections 810.3, 810.5, 810.62-810.64, 810.122 and 810.153 are adopted with changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3895). Sections 810.4, 810.7, 810.9, 810.61, and 810.92 are adopted without changes to the proposed text, and will not be republished.

The amendments cover clarification for the verification of clinical hours, clarifying specialized competencies for registrants, created criteria for approved supervisors, deleting some unnecessary language, clarifying supervisor status, and redefining definitions. Fees were added for specialized competencies, being a Registered Sex Offender Treatment Provider Supervisor, and adjunct fees.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 810.3 - 810.5, 810.7, 810.9, 810.61 - 810.64, 810.92, 810.122 and 810.153 has been reviewed and the council has determined that the reasons for adopting the sections continue to exist; however, revisions to the rules are necessary. Sections 810.1-810.2, 810.6, 810.8, 810.31-810.34, 810.91, 810.121, 810.151-810.152, 810.181-810.183, 810.211, 810.241-810.242, and 810.271-810.272 have been reviewed and the council has determined that the reasons for readopting the sections continue to exist. The sections were proposed without changes and were opened for comments. No comments were received and the sections are readopted without changes.

The department published a Notice of Intention to Review the sections as required by Government Code, §2001.039 in the *Texas Register* (25 TexReg 6985) on July 21, 2000. No comments were received by the department on the publication of the notice.

The department is making the following changes due to staff comments to clarify the intent and improve the accuracy of the sections.

Change: Concerning §810.3(1)(B), "below" is replaced with proper Texas Register format reference "in clauses (i)-(ii) of this subparagraph."

Change: Concerning §810.3(2)(B), "below" is replaced with proper Texas Register format reference "in clauses (i)-(iii) of this subparagraph."

Change: Concerning §810.3(5)(A), the department changed the word "of" to "on" in "The Council on Sex Offender Treatment" to correct a typographical error; and changed "registrants" to "registrant's" to reflect proper grammatical terminology.

Change: Concerning §810.3(7), "section" is replaced with "subsection" for proper Texas Register reference.

Change: Concerning §810.62(b)(23), the department changed "measures" to "methods" and changed the word "and" to "or" for consistency and to make the sentence read better.

Change: Concerning §810.62(b)(25), the department added the word "methods" following the word "Physiological" for consistency.

Change: Concerning §810.62(b)(28), the department added the language "that are pre-pubertal or" preceding "under age 13" to give clarity to the sentence.

Change: Concerning §810.63(b)(9), the department added the word "is" preceding "a juvenile". The change was made for easier readability.

Change: Concerning §810.122(20), the department deleted the lower case "a" and substituted it with a capital "A" for consistency throughout the section.

The following comments were received concerning the proposed rules. Following each comment is the council's response and any resulting changes.

Comment: Concerning §810.3(3)(B), specialized competencies, a commenter stated there are very few trainings available to females offenders. It may be difficult to obtain hours to satisfy the required 24 hours to list as a specialized competency.

Response: The council disagrees. Listing the specialized competencies is only on a voluntary basis. If the Registered Sex Treatment Provider has the training and wishes to list themselves with the specialized competencies, they may do so. In addition, CSOT plans to offer workshops in the specialized field. No change was made as a result of this comment.

Comment: Concerning §810.3(3), a commenter asked if all hours of the summer juvenile conference training count towards a competency in juvenile work, or must an RSOTP document each presentation title and the number of training hours?

Response: Since the Council on Sex Offender Treatment sponsors the conference; it will be incumbent upon CSOT to determine what sessions can be counted towards the specialized competencies. The determination whether a session will count towards the specialized competencies will depend on the content of the session. CSOT will identify these tracks and include them in the agenda. Therefore, the registrant will have to be able to provide information that he/she attended that session. No changes were made as a result of the comment.

Comment: Concerning proposed §810.3(4)(B)(i)(II), renumbered as §810.3(4)(B)(i)(III), a commenter stated this condition places an unnecessary burden on supervisors in agency and private practice settings, which are not formal training programs. Further, it is not clear whether the faculty status must apply to the setting in which the supervision takes place. For example, I am a part-time faculty member at Baylor College of Medicine, but apart from Baylor I direct a private agency in which sex offender treatment is provided. Is this condition met simply based on these roles when my Baylor appointment has nothing to do with my RSOTP supervision?

Response: The council disagrees that this places unnecessary burden on the supervisors in an agency and/or private setting. The supervision can be done in the supervisor's private practice. The language is not to imply that the supervision needs to be in the university in which the supervisor is also a faculty member. No changes were made as a result of the comment.

Comment: Concerning §810.3(4), supervision, a commenter stated that this section is not clear in several respects. By reading subsections (i)(I) and (i)(II), I would not meet the criteria were not for the grandfathering condition, because I am a psychologist (Texas State Board of Examiners of Psychologists does not designate a supervisor status) and because the sex offender treatment program I direct is not in an accredited clinical training program. If this means that the licensing board must specifically approve and designate the provider as a "supervisor," it does not apply to a psychologist who supervises; the psychologist licensing board does not designate "supervisor" status under the license title. Rather, any psychologist may supervise under certain conditions. As the rules stands now, it excludes psychologist from being supervisors. A second commenter also stated the psychologists have no designated supervisors status in their licensure standards. Psychologists are, however, allowed to supervise Licensed Professional Counselors for their hours due to psychologists have more training and a doctoral degree in addition to a masters degree. Psychologists should be able to serve as an RSOTP supervisor.

Response: The council agrees with both commenters, and the language was changed to include licensed psychologist and physicians as ASOTP supervisors.

Comment: Concerning §810.3(4)(B), a commenter stated that this section is not clear. Does it mean that anyone currently supervising is granted approved supervisor status permanently? If a current supervisor at some point goes a period of time without supervising as ASOTP, then wishes to begin supervising again, will that supervisor be retroactively approved or must the RSOTP then meet the criteria?

Response: If an RSOTP is or has supervised an ASOTP in the past, provided that RSOTP is in good standing and has paid the requisite credentialing fee, the RSOTP may continue to supervise ASOTP's regardless of whether a lapse of time has occurred. No change was made as a result of the comment.

Comment: Concerning §810.62(b)(13), cognitive process and arousal patterns, a commenter stated that this statement should read sexual arousal patterns or sexual interest patterns or sexual preference patterns".

Response: The council agrees with the commenter and has changed the wording to "sexual arousal/preferences patterns" in the paragraph.

Comment: Concerning §810.62(b)(22), methods such as polygraph, phallometric and other research based sexual arousal/sexual preference assessments, a commenter stated that it appears that "other research based sexual arousal/sexual preference assessments" is likely referring to Visual Reaction Time measures, probably the most well known at this time being the Abel Assessment of Sexual Interest. I make this assumption because Visual Reaction Time (VRT) Measures is currently the only other research based sexual interest assessment technique available besides phallometric measure. If it is this technique that this rule is referring to, I suggest it mimic Association for the Treatment of Sexual Abusers and read "methods such as polygraph, phallometric and visual reaction time measure." Another commenter suggested adding the VRT when referencing sexual arousal/preference assessment. A third commenter stated that the reference to VRT is being termed "sexual arousal/preference assessment" in the proposed rules. If this is correct, we suggest that VRT, a well-known

descriptor for the technology, be submitted for the descriptor found in the proposed rules.

Response: The council agrees with all three commenters and has added "visual reaction time" to the paragraph.

Comment: Concerning §810.62(b)(23), physiological measures and sexual arousal/sexual preference assessment, a commenter asks if the language refers to visual reaction time measures. It should read as "psychophysiological measures should not replace" or "phallometric or visual reaction time measures should not replace".

Response: The council disagrees with the commenter that visual reaction time is a physiological measure. No changes were made as a result of the comment.

Comment: Concerning §810.62(b)(25), physiological or sexual arousal/sexual preference assessment, a commenter stated that since the old rules used the term Phallometric methods where you have now placed "physiological", I assume this refers to that technique. Again refer back to 810.62(b)(22); if sexual arousal/sexual preference refers to visual reaction time, this language implies that visual reaction time is not a physiological measure, which is inaccurate. Proposed language: Psychophysiological assessment cannot or Phallometric or visual reaction time measures or polygraph cannot...

Response: The council disagrees with the commenter that visual reaction time is a physiological measure. No changes were made as a result of the comment.

Comment: Concerning §810.62(b)(27), when using pallometric assessment or aversion techniques with persons under 15, a commenter stated that the age should be 17 because medical and or psychological intervention cannot ethically be performed on minor children without guardian's knowledgeable consent. Another commenter stated that the Texas Youth Commission does not use phallometric assessment with minors.

Response: The council agrees with both commenters and the age was changed from 15 years to 17 years of age in paragraph (27).

Comment: Concerning §810.62(b)(34), a commenter stated that the language should read "sensitive to the survivor's wishes" instead of "sensitive of the survivor's wishes".

Response: The council agrees with the commenter, and the language has been corrected.

Comment: Concerning §810.63, a commenter stated that the title of the rule should be "Assessment" instead of "Assessments".

Response: The council agrees with the commenter, and the title has been changed.

Comment: Concerning §810.64(b)(1), a commenter stated that in order to document changes in arousal control, physiological measurement is essential and basically supports this statement; however believes the language is inaccurate. It should state, "to document changes in sexual arousal control, psychophysiological measurement is essential" instead of "Physiological measurement is essential".

Response: The council disagrees with the commenter. Currently there is no sufficient data that support that visual reaction time changes with treatment or is related to the reduction in sexual recidivism. No change was made as a result of this comment.

Comment: Concerning §810.64(b)(3), a commenter stated that there should be no apostrophe in the word "cognitions" which is plural and not possessive.

Response: The council agrees with the commenter and paragraph §810.64(b)(3) reflects this change.

Comment: Concerning §810.64(b)(8), a commenter stated that the word "victim's" is incorrect and should be plural and possessive, so the apostrophe should follow the "s" and not precede it. Groups belong to "victims" in the plural, not to a single victim.

Response: The council agrees with the commenter and paragraph §810.64(b)(8) reflects this change.

Comment: Concerning §810.64(b)(11), a commenter stated that the language should state "the use of polygraphs, and phallometric or visual reaction time assessments" instead of "the use of polygraphs and phallometric or sexual arousal/sexual preference assessment." Another commenter stated that VRT should be added when referencing sexual arousal/preference assessment.

Response: The council disagrees with both commenters that visual reaction time should be added to this paragraph. The council has further deleted the language "or sexual arousal/preference assessment" from the paragraph.

Comment: Concerning §810.122(12), the definition for "Sexual arousal/preference assessments-The self report measure of sexual preference". A commenter stated that if you refer to visual reaction time, it is an accepted objective psychophysiological measure while has research support and has been acknowledged as a valid OBJECTIVE measure of sexual interests by the American Psychiatric Association and by the Association for the Treatment of Sex Abusers (ATSA). Visual reaction time and/or the Abel Assessment IS NOT A SELF-REPORT.

Response: The council agrees with the commenter that the visual reaction time is not a self-report measure. The council has changed the definition and omitted the wording "self report measure of sexual preference".

Comment: Concerning §810.122(12), a commenter suggested adding VRT referencing sexual arousal/preference assessments.

Response: The council disagrees with the commenter, and has reworded the definition of sexual arousal/preference to accommodate the suggestion.

Comment: Concerning §810.122(12), a commenter stated that VRT is an objective measure for deviant sexual interest based on viewing time, not self-report. Numerous articles have been published and/or presented on VRT that well document this fact. The way the proposed rule is worded is misleading and incorrect.

Response: The council agrees with the commenter and the definition of Sexual arousal/preference assessment has been changed to "Psychological assessment of sexual preference and/or sexual arousal".

Comment: Concerning §810.153, "the council shall contract....tracking services, polygraph services, medication, penile plethysmographs." A commenter stated that recent independent and ATSA sponsored research have demonstrated that visual reaction time measures (specifically the Abel assessment of sexual interest) have shown reliability and validity comparable to the penile plethysmograph in identifying sexual interest patterns. ATSA has acknowledged the acceptability of this methodology.

In Texas, the use of visual reaction time out numbers penile plethysmography 3 to 1. There is no research available, which would support visual reaction time being excluded from use in this instance. The proposed language should state, "the council shall contract...tracking services, polygraph services, medication, psychophysiological assessment of sexual interest services".

Response: The council disagrees with the commenter that the language of sexual interest should be added to this section. This language is specifically from the Health and Safety Code, Article 4, Title 11, Chapter 841. The council has no authority to change the language without an amendment to the current statute. No change was made as a result of the comment.

Comment: Concerning §810.153(7), the proposed definition stated "Plethysmograph- Physiological measure of sexual arousal. Penile plethysmograph assessments shall consist of concurrent monitoring of erectile response, GSR, and respiration while the client is attending to sexual stimuli presented in an audio-visual format."

The commenter stated that first, the plethysmograph is a medical instrument, which measures blood flow to a variety of body parts. Technically, the rule is referring to a PENILE plethysmograph and the word PENILE should be added to the beginning of this definition. The commenter does not support this rule in any form.

Second, the commenter stated that there are numerous penile plethysmograph assessment instruments on the market. The commenter supports the use of phallometric measures in our field because he believes the research supports it's use. What is described here is a specific phallometric instrument, produced by a specific manufacturer. There is absolutely no support from any professional organization or by the research that this particular instrument is any more reliable or valid than the other types of penile plethysmographs that do not use Galvanic Skin Response or respiration or audio-visual format. In fact, GSR and respiration have not been shown or even proposed as valid measures sexual interest or arousal patterns. Those measures are suggested as indicators of possible client control and the research is still limited and sparse on that premise. There are no support guidelines that would suggest audio-visual format is any more accurate than audiotapes and visual slides presented separately.

Response: The council agrees with the commenter and the language "penile" was added when referencing plethysmographs. Furthermore, the language has been deleted as to not exclude or limit other penile plethysmographs.

The comments on the proposed rules were received by five individuals that were neither for nor against the rules in their entirety; however, they raised concerns regarding some definitions, offered comments for clarification purposes, and made suggestions regarding what they thought was inaccurate.

SUBCHAPTER A. SEX OFFENDER TREATMENT PROVIDER REGISTRY

22 TAC §§810.3 - 810.5, 810.7, 810.9

The amendments are adopted under Texas Civil Statutes, Article 4413(51), §2, which provides the council with the authority to adopt rules consistent with the Act, which are necessary for the performance of its duties.

§810.3. Registry Criteria.

The council maintains a database of registrants whose experience in the treatment of sex offenders may vary. The council shall recognize the experience and training of treatment providers in either one of two categories. These may be "Registered Sex Offender Treatment Provider" or "Affiliate Sex Offender Treatment Provider."

(1) Registered Sex Offender Treatment Provider (RSOTP). The council may waive any prerequisite to registration for an application after receiving the applicant's credentials and determining that the applicant holds a valid registration from another state that has registration requirements substantially equivalent to those of this state. To be eligible as a RSOTP, the applicant must first meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, licensed master social worker-advanced clinical practitioner, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the treatment of sex offenders. The license status must be current and active.

(B) experience and training required as listed in clauses (i)-(ii) of this subparagraph:

(i) possess a minimum of 1000 hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within a consecutive seven-year period, and provide two reference letters from licensed or certified professionals who have actual knowledge of the applicant's clinical work in sex offender treatment; and

(ii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title (relating to Documentation of Experience and Training), obtained within three years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours must be in sex offender specific training. Ten hours must be in sexual assault issues and/or sexual assault survivor related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) persons making initial application or renewing their eligibility for the registry shall adhere to Subchapter C Standards of Practice and Subchapter D Code of Professional Ethics and shall comply with the following:

(i) not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(ii) not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) not have been determined by the council to have engaged in deceit or fraud in connection with the delivery of services or documentation of registry requirements or registry eligibility;

(v) submit themselves to a criminal history background check. An applicant may be required to submit a complete set

of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title (relating to Fees);

(F) submit a copy of his or her professional license, as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application before a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(2) Affiliate Sex Offender Treatment Provider (ASOTP). To be eligible as an ASOTP, the applicant must meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, psychological associate, licensed professional counselor, licensed marriage and family therapist, licensed master social worker, advanced nurse practitioner, licensed marriage and family therapist associate, licensed professional counselor intern, provisionally licensed psychologist, recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for the rehabilitation of sex offenders;

(B) experience and training required as listed in clauses (i) - (iii) of this subparagraph:

(i) possess a minimum of 250 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders, provide two reference letters from licensed or certified professionals who have actual knowledge of the applicant's clinical work in sex offender treatment;

(ii) supervised by an RSOTP in accordance with paragraph (4)(C) of this subsection until RSOTP status is reached; and

(iii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title, obtained within three years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours must be in sex offender specific training. Ten hours must be in sexual assault issues and/or sexual assault survivor related training;

(C) complete and submit an accurate description of their treatment program on a form provided by the council;

(D) persons making initial application or renewing their eligibility for the registry shall adhere to Subchapter C Standards and Subchapter D Code of Professional Ethics shall comply with the following:

(i) not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(ii) not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) not have been determined by the council to have engaged in deceit or fraud in connection with the delivery of services or documentation of registry requirements of registry eligibility;

(v) submit themselves to a criminal history background check. An applicant may be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title;

(F) submit a copy of his or her professional license or certification as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application in the presence of a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(3) Specialized Competencies. Registered Sex Offender Treatment Providers with specialized competencies in the assessment and treatment of juvenile, female, and/or mentally handicapped sex offenders may have those competencies listed by their name in the Registry, if they meet the following criteria (certification is required only for the initial publication and not thereafter):

(A) possess at least 250 hours experience in the assessment and treatment of juvenile, female, or mentally handicapped sex offenders; these hours may be part of the original training and experience hours required for the original certification (going back up to 7 years);

(B) possess a minimum of 24 hours of documented continuing education training in the assessment and treatment of juvenile, female, or mentally handicapped sex offenders; these hours may be part of the original training and experience hours required for the original certification (going back up to 7 years); and

(C) pay an annual fee for each specialty as defined in §810.5 of this title.

(4) Supervision. All ASOTP's providing any sex offender treatment must be supervised. Supervision will include the following.

(A) An ASOTP providing any sex offender treatment is required to be under the supervision of an approved RSOTP supervisor. The ASOTP must provide a notarized copy of supervision documentation annually, to the council during the renewal period.

(B) An RSOTP supervisor that has not been a supervisor prior to the effective date of this rule must meet the following criteria:

(i) five years experience as a RSOTP:

(I) designated as a supervisor under their license title;

(II) designated as a licensed psychologist or physician; or

(III) designated as a faculty member or adjunct faculty member in an accredited clinical training program of their discipline; and

(ii) designation as an approved RSOTP supervisor, which will require an annual credentialing fee as defined in §810.5 of this title.

(C) The ASOTP must receive face-to-face supervision at least one hour per month, or if providing more than 20 hours of direct clinical sex offender assessment and treatment per month, the ASOTP must receive one hour of supervision per every 20 hours of sex offender assessment and treatment.

(D) The supervising RSOTP must submit annual documentation to the council at the time of their renewal; the documentation will contain the name(s) of the ASOTP(s) that have been supervised during the year. The supervising RSOTP will be required to use a form provided by the council.

(5) Registration Certificates. Upon successful completion of the application or renewal process, registrants will receive an official certificate from the council. This certificate must be displayed at all locations where sex offender treatment is provided and or provide a copy on initial intake. For a nominal fee, duplicate certificates may be obtained for this purpose.

(A) The Council on Sex Offender Treatment Providers (Council) shall prepare and provide to each registrant a certificate which contains the registrant's name and certificate number.

(B) A registrant shall not display a registration certificate, which has been reproduced or is expired, suspended, or revoked.

(C) Any certificate issued by the council remains the property of the council and must be surrendered to the council upon demand.

(D) The address and telephone number of the council must be displayed at all locations where sex offender treatment is conducted and/or provide a copy on initial intake for the purpose of directing complaints against the registrant to the council.

(6) Application processing. The council shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from a completed application receipt and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for registry renewal - 30 days; and

(ii) letter of initial application deficiency - 30 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) approval of application- 42 days; and

(ii) letter of denial of license or registration - 90 days.

(7) Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (6)(A) of this subsection.

(A) The applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request will be denied.

(B) Good cause for exceeding the time is considered to exist if the number of applications for registration or renewal exceeds by 15% or more, the applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the council in the application process caused the delay; or any other condition exists giving the council good cause for exceeding the time.

(C) If the executive director denies a request for reimbursement under subparagraph (A) of this paragraph the applicant may appeal to the council for a timely resolution of any dispute arising from a violation of the times. The applicant shall give written notice to the council at the address of the council that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time. The council shall provide written notice of the decision to the applicant and the executive director. The council shall decide an appeal in favor of the applicant, if the applicable time was exceeded and good cause was not established. If the council decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(D) The times for contested cases related to the denial of registration or renewal are not included with the times listed in paragraphs (6)(A) and (6)(B) of this subsection. The time for conducting a contested case hearing runs from the date the council receives a written hearing request until the council's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of council meetings.

§810.5. Fees.

The council has established the following registration fees.

(1) All applicants must submit a non-refundable application fee of $200 and a nominal electronic application fee if applicable, as established by the contracting agency and meet the following requirements for consideration and inclusion in the registry:

(A) return the completed, signed and notarized application form provided by the council;

(B) submit the registration fee in the form of a check or money order; and

(C) submit, within 90 calendar days, any documentation required to complete the application if requested by the council, or a new application and registration fee must be submitted.

(2) Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks. Fees shall be determined by those agencies conducting the investigation.

(3) Applicants that meet the specialized competency criteria and chose to list those competencies listed in the registry will be charged an initial $20 non-refundable fee per specialty.

(4) Renewal forms and information will be mailed to each registrant at least 60 days prior to registration expiration and sent to the registrant's last address of record with the council.

(5) Registrants that meet the RSOTP supervisor criteria and want to be designated as an approved supervisor shall pay an annual $20 credentialing fee.

(6) To renew, an RSOTP or an ASOTP must submit an annual renewal fee of $100 and a nominal electronic renewal fee if applicable, as established by the contracting agency and meet the following requirements.

(A) A person who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required registration fee to the council on or before the expiration date of the registration.

(B) Registrants wanting to continue to list their specialized competencies in the registry will be charged an annual $10 fee per specialty listed.

(C) If a registration has been expired for 90 days or less, the late renewal fee is $150.

(D) If a registration has been expired for longer than 90 days but less than one year, the reinstatement fee is $200.

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 November 4, 2002.

TRD-200207169
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Effective date: November 24, 2002
Proposal publication date: May 10, 2002
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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.64

The amendments are adopted under Texas Civil Statutes, Article 4413(51), §2, which provides the council with the authority to adopt rules consistent with the Act, which are necessary for the performance of its duties.

§810.62. Council Assertions.

(a) Registrants shall:

(1) be committed to community protection and safety;

(2) not discriminate against clients with regard to race, religion, gender preference, or disability;

(3) treat clients with dignity and respect, regardless of the nature of their crimes or conduct;

(4) be knowledgeable of legal statutes and scientific data relevant to this area of specialized practice;

(5) perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities;

(6) insure that the client fully understands the scope and limits of confidentiality in the context of his or her particular situation;

(7) refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary professional fees;

(8) not engage in sexual relationships with clients (sex between a mental health services provider and a client is a second degree felony in Texas);

(9) fully inform clients in advance of fees for services;

(10) refrain from knowingly providing treatment services to a client who is in treatment with another professional without initial consultation with the current registrant;

(11) make appropriate referrals when the registrant is not qualified or is otherwise unable to offer services to a client;

(12) insure that colleagues are qualified by training and experience before making a referral to them;

(13) when withdrawing services, minimize possible adverse effects on the client and the community by continuing treatment until the client has been admitted elsewhere;

(14) take into account the legal/civil rights of the clients, including the right to refuse treatment;

(15) make no claims regarding the efficacy of treatment that exceed what can be reasonable expected and supported by empirical literature;

(16) avoid drawing conclusions or rendering opinions that exceed the present level of knowledge in the field or the expertise of the evaluator;

(17) attempt to resolve with the clinician and/or report to the appropriate licensing or regulatory authority unethical, incompetent, and dishonorable treatment or evaluation practices; and

(18) display or provide in writing the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Registrants assert that:

(1) community safety takes precedence over any conflicting consideration, and ultimately, is in the best interests of the offender and society;

(2) inappropriate or unethical treatment damages the credibility of all treatment and presents an unnecessary risk to the community;

(3) criminal investigation, prosecution, and court orders for treatment may be components of effective intervention;

(4) where practical, registrants should actively involve community supervision officers, child protective services workers, and survivor therapists in case management;

(5) a voluntary client accepted for treatment should be held to the same standards of compliance as are mandated sex offenders;

(6) it is imprudent to release an untreated sex offender without providing offense-specific assessment and treatment or specialized supervision;

(7) without external pressure many sex offenders will not follow through in treatment. Internal motivation improves the prognosis, but is not a guarantee of success;

(8) comprehensive assessment of the sex offender must precede treatment and includes issues addressed in §810.63 of this title (relating to Assessment/Evaluation Concerns);

(9) sex offenders require comprehensive, long term, offense-specific treatment. Currently, cognitive-behavioral approaches that utilize sex offender peer groups have been recognized as the standard method of treatment. Treatment groups shall be limited to 12 clients and special needs groups should be limited to 8 clients. Self-help groups, drug intervention, or time limited treatment should be used only as adjuncts to more comprehensive treatment. For some sex offenders, incarceration without treatment may increase the risk of recidivism;

(10) a written individualized treatment plan that identifies the issues, intervention strategies, and goals of treatment shall be prepared for each sex offender. Treatment plans should be reassessed periodically;

(11) the treatment plan may include behavioral contracts which outline specific expectations of the sex offender, his/her family, and the sex offender's support systems. These contracts should include provisions to avert high risk situations. These contracts should be reassessed periodically;

(12) progress, or lack thereof, should be clearly documented in treatment records. Specific achievements, failed assignments and rule violations should be recorded. This information should be provided to the appropriate supervising officer in the justice system;

(13) progress in treatment must be based on specific, measurable objectives, observable changes, and demonstrated ability to apply changes in relevant situations. For most sex offenders, progress requires changes in the sex offender's behavior, attitudes, social and sexual functioning, cognitive processes, and sexual arousal/preference patterns. These changes should demonstrate increased understanding by the offender of his/her own deviant behavior, sensitization to the effects on a survivor, and ability to seek and apply help;

(14) when a sex offender has made the changes required in treatment, there should be a gradual and commensurate decline of intervention, support, and supervision following an offense-specific treatment program. Ongoing support to maintain changes made in treatment is necessary and aftercare and monitoring are desirable;

(15) there will be instances when the registrant should refuse to treat a sex offender because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(16) the registrant has an ethical obligation to refer the client to a more comprehensive treatment program and/or to the judicial system, when the registrant determines that a sex offender is not making the changes necessary to reduce his/her risk to the community;

(17) failure on the part of clients to abide by their treatment plans and/or contracts should result in referral back to the supervising officer in the justice system;

(18) a registrant may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(19) registrants need to immediately notify the appropriate authority when a client drops out of court-ordered treatment;

(20) most sex offenders enter the criminal justice system with varying degrees of denial regarding their behavior. Overcoming denial is a gradual process achieved in treatment. The existence of some degree of denial should not preclude an offender entering treatment, although the degree of denial should be a factor in identifying the most appropriate form and location of treatment;

(21) sex offender treatment is unlikely to be effective unless the sex offender admits his/her behavior. Community based treatment may not be appropriate for sex offenders who continue to demonstrate complete denial after a trial period of treatment;

(22) registrants shall not rely exclusively on self report by the sex offender to assess progress or compliance with treatment requirements and/or probation or parole orders. Registrants shall rely on multiple sources of information which may include physiological methods such as polygraph, phallometric, and other research based sexual arousal/preference assessments including but not limited to the Card Sort or visual reaction time methods;

(23) physiological methods or sexual arousal/preference assessment should not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Penile Plethysmograph in Texas must be conducted by an order and under the supervision of a physician. Polygraph examinations should only be conducted by licensed examiners that meet the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JPCOT);

(24) polygraph can be effective in encouraging disclosure of prior events and adherence to rules. This procedure should never be the only method used to determine factual information;

(25) Physiological methods or sexual arousal/preference assessments cannot be used to prove an individual did or did not, or will or will not commit a sexual offense. However, they can be useful in identifying sexual preferences;

(26) informed, voluntary consent should always be obtained prior to engaging clients in aversive conditioning;

(27) when using phallometric assessment or aversive treatment techniques with persons 17 years of age or younger, consent for such assessment and treatment should be obtained from the juvenile sex offender and written consent for such assessment and treatment should be obtained from the juvenile sex offender's parents or legal guardians, and the procedures should be reviewed by a multi-disciplinary professional or institutional advisory group. This is intended to insure that individuals not intimately involved in the treatment of the patient have input regarding the appropriateness of such methods consistent with the developmental level of the child. Stimuli must be specific for use with adolescents;

(28) individuals that are pre-pubertal or under age 13 should not undergo phallometric assessment or aversive treatment except in rare cases which must be approved by a multi-disciplinary advisory group;

(29) in cases of intellectually handicapped sex offenders who are unable to give written consent, an interdisciplinary review and parent's or legal guardian's written consent must be obtained for permission to proceed with treatment;

(30) removal of an intrafamilial sex offender against children from a residence in which children reside (instead of the children) is the preferred option;

(31) treatment referrals should be offered to the non-offending spouse and children in cases where a parent or legal guardian has been removed and to the family where a juvenile sex offender has been removed;

(32) if the sex offender has a history of sexual arousal to or reported fantasies of sexual contact with children, he or she should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist;

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated conditions do not prohibit such contact;

(33) there is evidence to support family participation in the treatment of the sex offender. Where feasible and appropriate, spouses and other family members should be included. Sexual assault survivors or vulnerable children should be excluded until such time as joint therapy is determined to be appropriate;

(34) the registrant should make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Registrants should be sensitive to the survivor's wishes and needs regarding contact with the offender. Contact should be arranged in a manner that places child/victim safety first. When assessing child safety, both psychological and physical well-being should be considered. The registrant shall ensure that custodial parents or legal guardians of the children have been consulted prior to authorizing contact and that contact is in accordance with Court directives; and

(35) if reunification is deemed appropriate, the process should be closely supervised. There must be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety should be assessed on a continuing basis. The registrant should recognize that supervision during visits with children is critical for those whose crimes are against children, or who have demonstrated the potential to abuse children. The supervisor of the contact should be knowledgeable concerning sexual offending behaviors.

§810.63. Assessment/Evaluation Concerns.

(a) The evaluation focuses on both the risks and needs of the sex offender, as well as identifying factors from social and sexual history which may contribute to sexual deviance. Evaluations provide the basis for the development of comprehensive treatment plans and should provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the sex offender presents to the community. There is no known set of personality characteristics that can differentiate the sex offender from the non-sex offender. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner.

(b) The following standards were largely adapted from a publication from the Association for the Treatment of Sexual Abusers entitled, Ethical Standards and Principles for the Management of Sexual Abusers, Revised 2001. Evaluations shall precede treatment. In preparing evaluations of sex offenders, registrants are expected to:

(1) be fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the evaluator's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the evaluation and the interpretation of data, as well as the basis for recommendations and conclusions;

(4) be aware of the client's legal status;

(5) be mindful of the limitations of client's self-report and make all possible efforts to verify the information provided by the client;

(6) use evaluative procedures and techniques sufficient to respond to the presenting issues, as well as to provide appropriate substantiation for the resulting conclusions and recommendations;

(7) acknowledge if an evaluation consisted of only a review of data, with no client contact, and clarify the impact that limited information has on the reliability and validity of the resulting report;

(8) provide informed consent, releases and/or limit of confidentiality documents in written form and employ verbal explanations for non-readers;

(9) if the client is incapable or is a juvenile, written consent shall be obtained for assessment and information exchange from the appropriate parent or legal guardian. Assent from the individual being evaluated should be obtained whenever possible;

(10) thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources, including:

(A) criminal investigation records;

(B) child protection service investigations;

(C) previous evaluations and treatment progress reports;

(D) mental health records and assessments;

(E) medical records;

(F) correctional system reports;

(G) probations/parole reports;

(H) information regarding details of the offense as obtained by law enforcement; and

(I) offense statements from victim;

(11) whenever possible, interview the client's significant other and/or family of origin;

(12) cautiously interpret evaluation conducted without collateral information;

(13) list and acknowledge in a written report evaluation procedure summaries, conclusions, recommendations, and all collateral reports and interviews;

(14) re-interviews of survivors should not be used for the purpose of gathering information during the sex offender's evaluation; and

(15) keep the sex offender and survivor's interview and evaluation processes separate. If that is not possible, the evaluator must be extremely vigilant to avoid bias.

(c) The evaluation procedures may include:

(1) clinical review;

(2) paper/pencil testing;

(3) intellectual assessment; and

(4) physiological assessments.

(d) Information gathered in the evaluation process includes, but is not limited to:

(1) intellectual and cognitive functioning;

(2) mental status;

(3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;

(4) self-destructive behaviors, self mutilation and suicide attempts;

(5) psychopathology and personality characteristics;

(6) family history;

(7) history of victimization; physical, emotional and/or sexual;

(8) education and occupation history;

(9) criminal history, both sexual and non-sexual;

(10) history of violence and aggression including use of weapons;

(11) interpersonal relationships, both past and current;

(12) cognitive distortions;

(13) social competence;

(14) impulse control;

(15) substance abuse;

(16) denial, minimization and inability to accept responsibility;

(17) sexual behavior, including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and

(18) sexually deviant behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and sexual arousal patterns.

(e) Registrants will subscribe to the following tenets regarding client assessment.

(1) The comprehensive assessment of the client's sexually deviant behavior is specific to the evaluation of the sex offender.

(2) It is important to be sensitive to the individual's cognitive functioning, including reading and writing capabilities, prior to arranging the battery of testing instruments.

(3) If a client cannot read at the level necessary to comprehend the test questions, arrangements for using a standardized approved auditory (taped or read) version of the test instrument should be made, to the extent such versions are available.

(4) The clinical interview must incorporate sufficient discussion necessary to augment, clarify and explore the information obtained from the review of collateral materials (and interviews), as well as the other components of the evaluation (testing results, etc.).

(5) It is important to note the degree of similarity or disparity between the abuser and the victim's statements.

(6) The client's explanations for false allegations should be documented.

(7) Assessment of treatment needs should identify strengths and weaknesses in the individual's sociosexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(8) Both community safety and the degree to which a sex offender is capable and willing to manage risk should be considered when generating recommendations.

(9) A thorough evaluation should be completed prior to a sex offender being accepted into a community based treatment program.

(A) If a significant amount of time has lapsed between the completions of the evaluation and when the individual applies for acceptance into a treatment program, an evaluation update is required.

(B) The intent of the update should not be to duplicate the original evaluation, but to gather current data upon which the original treatment plan can either be confirmed or amended.

(10) A sex offender treatment provider should never recommend an inadequate treatment program or level of risk management because existing resources limit or preclude adequate or appropriate services.

§810.64. Issues to Be Addressed in Treatment.

(a) During the decade preceding 1995, the field of sex offender assessment and treatment has undergone many changes. Research and clinical reports have begun to demonstrate that a number of treatment methods may be effective in modifying some forms of sexual deviance.

(b) Although existing data are inadequate to determine which type of treatment is the most effective for which type of sex offender, the following treatment methods generally are accepted as those most important to the effective treatment of sexual deviancy.

(1) Arousal Control. Control of deviant arousal, fantasies, and urges is a priority with most sex offenders. Fantasy and sexual arousal to fantasy are precursors to deviant sexual behavior. It should be assumed that most offenders have gained sexual pleasure from their specific form of deviance. Arousal control methods do not eliminate but only help control arousal. It is therefore necessary that clients learn to apply these techniques in everyday situations. Arousal control may require periodic "booster" sessions for the remainder of the client's life. Effective arousal control must also include methods to control spontaneous deviant fantasies and to minimize contact with stimulating objects or persons. Arousal control should proceed from the most effective methods for reducing arousal to less effective methods. To document changes in arousal control, physiological measurement is essential. Multiple measures over time are required to determine change reliability.

(2) Cognitive Therapy. Cognitive distortions are thoughts and attitudes that allow offenders to justify, rationalize, and minimize the impact of their deviant behavior. Cognitive distortions allow the offender to overcome prohibitions and progress from fantasy to behavior. These distorted thoughts provide the sex offender with an excuse to engage in deviant sexual behavior, and serve to reduce guilt and responsibility. Cognitive therapy strives to identify, assess, and modify cognition's that promote sexual deviance. Cognitive therapy is considered a vital component of treatment.

(3) Relapse Prevention. Current knowledge of deviant sexual behavior suggests that there is a cycle of behaviors, emotions, and

cognitions that is identifiable and which precede deviant sexual behavior in a predictable manner. The ability to accurately identify these maladaptive behaviors is a primary goal for every offender in treatment. Autobiographies, offense reports, interviews and cognitive-behavioral chains are used to identify antecedents to offending. The ability to intervene can be enhanced by training primary partners and other support persons to recognize maladaptive behaviors and to encourage application of proper coping behaviors. In addition, treatment should include a formal multi-level relapse prevention plan.

(4) Victim Empathy. Although there is no clear evidence to suggest that all sex offenders can gain true empathy for victims of abuse, a universal goal of treatment is to learn to understand and value others. Highlighting the consequences of victimization helps sensitize the offender to the harm he or she has done. The use of analogous experiences has been shown to be effective especially with adolescents.

(5) Biomedical Approaches. Intervention with psychopharmacological agents is useful in select cases. Antiandrogens such as depo-provera act by reducing testosterone and may be helpful in controlling arousal and libido when these factors are undermining progress in therapy or increasing the risk of re-offending before significant progress can be made in the cognitive aspects of therapy. Antidepressants and medications targeting obsessive compulsive symptoms are also useful in some individuals where those symptoms play a role in the overall psychodynamic picture. Likely candidates are those who are predatory, violent, have had prior treatment failures, and report an inability to control deviant sexual arousal. Use of these agents should never be the only method of treatment.

(6) Increasing Social Competence. Sex offenders often have deficits in basic social and interpersonal skills. They may lack the ability to develop and sustain reciprocal friendships. Many sex offenders are poor problem-solvers, lack assertiveness, and do not adequately manage anger or stress. One goal of treatment is to improve the offender's ability to deal effectively with social situations and develop meaningful relationships with others.

(7) Improving Primary Relationships. Failure to develop and maintain a reciprocal, living sexual relationship with an adult partner may lead one to seek out alternative sexual outlets. Identifying specific sexual dysfunctions, sex therapy, and training in dating skills and erotic techniques may be necessary to develop a functional lifestyle. Failure to involve the current partners in therapy often leads to the same stresses and failure in the relationship that precipitated the sexual deviancy.

(8) Couples/Family Therapy. To facilitate transition of the sex offender's partner into therapy a variety of treatment modalities are recommended. Individual therapy, non-offending spouses groups, and/or parents or (8) legal guardians of victims' groups prepare the partner for the issues and methods involved in sex offender treatment. Marital therapy or couples group therapy focused on sexual offending is essential in cases where a sex offender is to return home. If an offender is to eventually live in a home where survivors or children reside, a predetermined integration sequence should be followed which addresses role and boundary issues. This should include close supervision and a variety of safeguards for the protection of children.

(9) Support Systems. Involvement of close friends and family in therapy provides the offender with a milieu in which support is available. Part of the transition to follow-up is a reduction in group and individual therapy. To compensate for this loss of support and surveillance, the support system should assist the offender in avoiding and coping with antecedents to sexual deviance. The support system should include individuals from the offender's daily life (i.e., family, friends, co-workers, church members, and extended family).

(10) Comorbid Diagnosis. In some sex offenders there are sufficient signs and symptoms to merit an additional diagnosis by DSM IV criteria. These diagnoses can be anywhere in the entire spectrum of psychiatric disease. The most common are alcohol abuse, substance abuse and affective disorders. Treating an alcohol or substance problem should not be assumed to make sex offender treatment unnecessary. Occasionally, the delusions and hallucinations of schizophrenia will be associated with the individual committing sexual offenses. The comorbid diagnoses should be treated with the appropriate therapies concomitantly with the treatment for sex offending behavior except in the case of schizophrenia where the antipsychotic therapy would obviously take precedence.

(11) After-care Treatment. A therapeutic regime that includes after-care treatment significantly increases the likelihood that gains made during treatment will be maintained. In order for new habits and skills to be reinforced and to monitor compliance with treatment contracts, after-care treatment should involve periodic "booster" sessions to reinforce and assess maintenance of positive gains made during treatment. This can be facilitated by involving the treatment group, supervision personnel, support system, the use of polygraphs, and phallometric assessment. Information from these sources may serve to deter future offenses or alert therapists to problems.

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 November 4, 2002.

TRD-200207170
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Council on Sex Offender Treatment
Effective date: November 24, 2002
Proposal publication date: May 10, 2002
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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.92

The amendment is adopted under Texas Civil Statutes, Article 4413(51), §2, which provides the council with the authority to adopt rules consistent with the Act, which are necessary for the performance of its duties.

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 November 4, 2002.

TRD-200207171
Walter J. Meyer, III, M.D.
Chairperson
Council on Sex Offender Treatment
Effective date: November 24, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER E. GENERAL PROVISIONS

22 TAC §810.122

The amendment is adopted under Texas Civil Statutes, Article 4413(51), §2, which provides the council with the authority to adopt rules consistent with the Act, which are necessary for the performance of its duties.

§810.122. Definitions.

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

(1) Act--Health and Safety Code, Title 11, Chapter 841.

(2) Behavioral abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) Biennial examination expert--A person or persons employed by or under contract with the council to conduct a biennial examination for a person committed under the Act, §841.081.

(4) Board--The Texas Board of Health.

(5) Civil commitment--The civil commitment of a person adjudged to be a sexually violent predator to a program involving outpatient treatment and supervision.

(6) Civil commitment case manager--A person employed by or under contract with the council to perform duties related to the outpatient treatment and supervision of a person civilly committed as a sexually violent predator.

(7) Civil commitment treatment provider--A person or persons employed by or under contract with the council to conduct assessments, provide treatment, conduct treatment planning and to assist the Civil Commitment Case Manager in supervising the sexually violent predator.

(8) Council--The Council on Sex Offender Treatment.

(9) Department--The Texas Department of Health.

(10) Multidisciplinary Team--Has the meaning assigned by the Act, §841.022.

(11) Penile Plethysmograph--The physiological measurement of sexual arousal.

(12) Sexual arousal/preference assessment--Psychological assessment of sexual preference and/or sexual arousal.

(13) Clinical polygraph examination--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act and used for the purpose of detecting deception or verifying truth of statements of any person under supervision and/or treatment of the commission of sex offenses.

(14) Polygraph examiner--A licensed polygrapher who adheres to the Joint Polygraph Committee on Offender Testing (JPCOT) for polygraphing sex offenders.

(15) Predatory act--An act that is committed for the purpose of victimization and that is directed toward:

(A) a stranger;

(B) a person of casual acquaintance with whom no substantial relationship exists; or

(C) a person with whom a relationship has been established or promoted for the purpose of victimization.

(16) Repeat sexual offender--Has the meaning assigned by the Act, §841.003.

(17) Sexually violent offense--Means:

(A) an offense under the Penal Code, §§21.11(a)(1), 22.011, or 22.021;

(B) an offense under the Penal Code, §30.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under the Penal Code, §30.02, if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraphs (A) or (B) of this paragraph;

(D) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraphs (A), (B) or (C) of this paragraph;

(E) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C) or (D) of this paragraph; or

(F) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), or (D) of this paragraph.

(18) Sexually violent predator (SVP)--Has the meaning assigned by the Act, §841.003.

(19) Supervised housing--Community residential facilities, or halfway houses, located in the State of Texas and under contract with the Texas Department of Criminal Justice, or other similar residential facilities as warranted which will house person adjudged to be sexually violent predators.

(20) Supervision contract--A contract wherein a person agrees to participate in an Outpatient Sexually Violent Predator Treatment Program (OSVPTP) and to abide by all of its terms and conditions.

(21) Tracking services--An electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

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 November 4, 2002.

TRD-200207172
Walter J. Meyer, III, M.D.
Chairperson
Council on Sex Offender Treatment
Effective date: November 24, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §810.153

The amendment is adopted under Texas Civil Statutes, Article 4413(51), §2, which provides the council with the authority to adopt rules consistent with the Act, which are necessary for the performance of its duties.

§810.153. Outpatient Treatment and Supervision Program.

The council shall contract for the provision of an OSVPTP, which utilizes intensive supervision and cognitive behavioral sex offender treatment to attain the goal of no more victims. The OSVPTP is composed of the following elements: housing, orientation, evaluation, tracking services, polygraph services, medication, penile plethysmograph, supervision and treatment.

(1) Housing. The council shall provide for any necessary supervised housing, including but not limited to, existing community residential facilities, or halfway houses currently under contract with the Texas Department of Criminal Justice (TDCJ) and private entities, or other similar residential facilities as warranted. The supervised housing shall be approved by the council and shall be in locations around the State where the Department of Public Safety (DPS) maintains sufficient personnel who are properly trained in utilizing all forms of tracking services. Upon being admitted to supervised housing, a SVP shall be placed on an intensive electronic monitoring system and shall not be allowed to leave the supervised housing until he has completed the Orientation Program and has successfully begun work on Stage One of the treatment plan.

(2) Orientation. A person civilly committed by a judge to supervised housing approved by the council, shall receive an orientation session from his assigned case manager involving the OSVPTP. The council shall establish employment guidelines and policies for the hiring of a case manager who will be responsible for coordinating the OSVPTP for the person civilly committed, and for informing the person of his rights, obligations, and responsibilities under the OSVPTP. A person civilly committed to the OSVPTP must sign all forms, releases and consent documents approved by the council, including but not limited to, the Supervision Contract (contract) which relate to said OSVPTP, and the person must agree to strictly adhere to the terms and conditions of said Contract and other documents as required by the Court. A person who signs the contract and adheres to its terms and conditions, is allowed to begin the OSVPTP. If the person fails to sign the documents, he is not permitted to begin the OSVPTP and will be subject to all legal sanctions available under the Act.

(3) Evaluation. The initial stage of the OSVPTP shall begin with a formal assessment of the SVP. The initial assessment shall involve two components. First, the case manager shall review and validate the formal risk assessment. Second, the treatment provider shall conduct an assessment for the purpose of identifying individual needs, which must be addressed during the OSVPTP. The individual needs as identified by the treatment provider shall be included in the person's individual treatment plan.

(4) Tracking Services. The council shall enter into an Interagency Agreement with the DPS which will provide the technology and expertise to track sexually violent predators during their commitment to the OSVPTP. The primary focus of intensive tracking services is to ensure community safety and to teach the person civilly committed the importance of adhering to a schedule and to the limitations imposed under the OSVPTP. Such services shall include but not be limited to electronic monitoring, global position tracking and surveillance. All SVP's shall begin an intensive monitoring system once a judge civilly commits the person for outpatient treatment and supervision. The minimum length of time that a person shall be on the intensive tracking schedule is one year. A person may receive a less intensive tracking schedule if the case manager and the treatment provider determine that such action is warranted.

(5) Polygraph Services. The treatment plan shall consist of clinical polygraph exams specific to sex offenders, including disclosure, maintenance and monitoring exams. The council shall only approve treatment plans, which utilize licensed polygraphers who agree to adhere to the Joint Polygraph Committee guidelines for polygraphing sex offenders.

(6) Medication. Medication may include anti-psychotic, anti-depressant, anti-anxiety, anti-obsessional, anti-androgenic and/or equivalent chemotherapy.

(7) Penile Plethysmograph. Physiological measure of sexual arousal. Measures of penile erection in response to presentations of sexual stimuli.

(8) Supervision. The council shall establish employment guidelines and policies for the hiring of a case manager who will be responsible for the supervision of the person civilly committed, and for the development of a supervision plan for that person. The case manager shall be responsible for:

(A) conducting office supervision and field visits to monitor the SVP;

(B) serving as a liaison with the sex offender therapist, and electronic tracking services;

(C) the polygrapher;

(D) all other professionals providing services to the SVP; and

(E) conducting on-going risk assessments and adjust the person's supervision according to the risk assessment.

(9) Treatment. The council shall approve and contract for the provision of a treatment plan which is based on a cognitive behavioral model with the focus of the treatment being holistic. The OSVPTP shall include but not be limited to sex offender specific group and individual therapy; social skills training, medicine, and if deemed warranted by the treatment provider, substance abuse counseling or traditional mental health treatment. The treatment plan shall be composed of standard tasks which all persons must complete. In addition, individual goals shall be established based upon evaluation data. A treatment plan may include the monitoring of the person with a polygraph or penile plethysmograph. The council shall establish employment guidelines and policies for the hiring of treatment providers who will be responsible for developing and implementing a treatment program approved by the council. All treatment plans and guidelines for standards of care are subject to the approval of the council prior to implementation.

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 November 4, 2002.

TRD-200207173
Walter J. Meyer, III, M.D.
Chairperson
Council on Sex Offender Treatment
Effective date: November 24, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 458-7236

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.302

The Comptroller of Public Accounts adopts an amendment to §3.302, concerning accounting methods, credit sales, bad debt deductions, repossessions, interest on sales tax, and trade-ins, with changes to the proposed text as published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7764). The change to subsection (f)(1) deletes old language that referred to "city and metropolitan transit authority" taxes. Local taxes also include county sales or use tax and special purpose district sales or use tax. The term "local" is used to represent all local sales and use taxes. The other change is to the amended language of subsection (h)(1) adds the phrase "as a bad debt" for clarity.

Subsection (h)(1) is amended to provide that tax paid on an account that later becomes a bad debt is not considered to be tax paid in error and does not accrue interest under Texas Tax Code §111.064. Subsection (d)(4) is amended for clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.005, 151.007, 151.008, and 151.426.

§3.302. Accounting Methods, Credit Sales, Bad Debt Deductions, Repossessions, Interest on Sales Tax, and Trade-Ins.

(a) Accounting methods.

(1) For sales and use tax purposes, retailers may use a cash basis, an accrual basis, or any generally recognized accounting basis that correctly reflects the operation of their business. Retailers who wish to use an accounting system to report tax that is not on a pure cash or accrual basis or that is not a commonly recognized accounting system should obtain prior written approval from the comptroller.

(2) Paragraph (1) of this subsection does not apply to the reporting of sales tax on rentals and leases of tangible personal property. See §3.294 of this title (relating to Rentals and Leases of Taxable Items) for the accounting of rentals and leases.

(b) Credit sales.

(1) Credit sales include all sales in which the terms of the sale provide for deferred payments of the purchase price. Credit sales include installment sales, sales under conditional sales contracts and revolving credit accounts, and sales by a retailer for which another person extends credit to the purchaser under a retailer's private label credit agreement.

(2) Sales tax is due on insurance, interest, finance charges, and all other service charges incurred as a part of a credit sale unless these charges are stated separately to the customer by such means as an invoice, billing, sales slip, ticket, or contract.

(3) Tax is to be reported on a credit sale based upon the accounting method that the retailer uses.

(A) If the retailer is on an accrual basis, the entire amount of tax is due and must be reported at the time the sale is made.

(B) If the retailer is on a cash basis of accounting, the payment received from the customer includes a proportionate amount of tax, sales receipts, and may also include finance charges. Tax must be reported based upon the actual cash collected during the reporting period, excluding separately stated finance charges.

(C) If the retailer uses an accounting basis that is not a pure cash or accrual basis, tax must be reported in a consistent manner that accurately reflects the realization of income from the credit sales on the retailer's books and records.

(c) Transfer or sale of sales contracts and accounts receivable. A retailer may sell, factor, or assign to a third party the retailer's right to receive all payments due under a credit sale. At the time the contract or receivable is sold, factored, or assigned, the tax becomes due on all remaining payments. The retailer is responsible for reporting all remaining tax due under the credit sale to the comptroller in the reporting period in which the contract or receivable is sold, factored, or assigned. No reduction in the amount of tax to be reported and paid by the retailer is allowed if the transfer to the third party is for a discounted amount. This section does not apply to a seller's assignment or pledge of contracts or accounts receivable to a third party as loan collateral.

(d) Bad debts.

(1) Any portion of the sales price of a taxable item that the retailer or private label credit provider cannot collect is considered to be a bad debt.

(A) A retailer is not required to report tax on any amount that has been entered in the retailer's books as a bad debt during the reporting period in which the sale was made, and that will be taken as a deduction on the federal income tax return during the same or subsequent reporting period.

(B) A retailer is entitled to a credit for tax reported and paid on an account later determined to be a bad debt. A retailer may take a deduction on the retailer's report form, or obtain a refund from the comptroller, in the reporting period in which the retailer's books reflect the bad debt. Deductions and refunds due to bad debts are limited to four years from the date the account is entered in the retailer's books as a bad debt.

(C) A retailer who extends credit to a purchaser on an account that is later determined to be a bad debt, a person who extends credit to a purchaser under a retailer's private label credit agreement on an account that is later determined to be a bad debt, or an assignee or affiliate of either who extends credit on an account that is later determined to be a bad debt, is entitled to a credit or refund for the tax paid to the comptroller on the bad debt.

(2) The amount of the bad debt may include both the sales price of the taxable item and nontaxable charges, such as finance charges, late charges, or interest that were separately billed to the customer. A deduction may only be claimed on that portion of the bad debt that represents the amount reported as subject to tax. In determining that amount, all payments and credits to the account may be applied ratably against the various charges that comprise the bad debt, except as provided by paragraph (3) of this subsection.

(3) A retailer, private label credit provider, or assignee or affiliate may not deduct from the amount subject to tax to be reported the expense of collecting a bad debt, or the amount that a third party

has retained or which has been paid to a third party for the service of collecting a bad debt.

(4) To claim bad debt deductions, the records of the person who claims the bad debt deduction must show:

(A) date of original sale and name and Texas sales tax permit number of the retailer;

(B) name and address of purchaser;

(C) amount that the purchaser contracted to pay;

(D) taxable and nontaxable charges;

(E) amount on which the retailer reported and paid Texas tax;

(F) all payments or other credits applied to the account of the purchaser;

(G) evidence that the uncollected amount has been designated as a bad debt in the books and records of the person who claims the bad debt deduction, and that the amount has been or will be claimed as a bad debt deduction for income tax purposes;

(H) city, county, transit authority, or special purpose district to which local taxes were reported; and

(I) the unpaid portion of the assigned sales price.

(5) A person who is otherwise qualified to claim a bad debt deduction, and whose volume and character of uncollectible accounts warrants an alternative method of substantiating the reimbursement or credit, may:

(A) maintain records other than the records specified in paragraph (4) of this subsection if:

(i) the records fairly and equitably apportion taxable and nontaxable elements of a bad debt, and substantiate the amount of Texas sales tax imposed and remitted to the comptroller with respect to the taxable charges that remain unpaid on the debt; and

(ii) the comptroller approves the procedures used; or

(B) implement a system to report its future tax responsibilities based on a historical percentage calculated from a sample of transactions if:

(i) the system utilizes records provided by the person claiming the credit or reimbursement and the person who reported and remitted such tax to the comptroller; and

(ii) the comptroller approves the procedures used.

(6) The comptroller may revoke the authorization to report under paragraph (5)(B) of this subsection if the comptroller determines that the percentage being used is no longer representative because of:

(A) a change in law, including a change in the interpretation of an existing law or rule; or

(B) a change in the taxpayer's business operations.

(7) A person who is not a retailer may claim a credit or reimbursement authorized by paragraph (1)(C) of this subsection only for taxes imposed by Tax Code, §151.051 or §151.101.

(8) For purposes of this section, "affiliate" means any entity or entities that would be classified as a member of an affiliated group under 26 U.S.C. §1504.

(9) If a retailer or other person later collects all or part of an account for which a bad debt deduction or write-off was claimed, the amount collected must be reported as a taxable sale in the reporting period in which such collection was made.

(10) Credit or installment sales may not be labeled as bad debts merely for the purpose of delaying the payment of the tax.

(e) Repossessions.

(1) When taxable items upon which the retailer or other person has paid tax are repossessed, the retailer or other person is allowed a credit or deduction for that portion of the actual purchase price that remains unpaid. The deduction must not include any nontaxable charges that were a part of the original sales contract. Any payments that the purchaser made prior to repossession must be applied ratably against the various charges in the original sales contract.

(2) A retailer or other person may not deduct from the tax to be reported the expense of collecting an account receivable, or the amount that a third party has retained or that has been paid to a third party for the service of collecting an account or repossessing or selling a repossessed item.

(3) To claim a deduction or credit the person who claims the deduction or credit must be able to provide detailed records that show:

(A) date of original sale and name and Texas sales tax permit number of retailer;

(B) name and address of purchaser;

(C) amount that the purchaser contracted to pay;

(D) taxable and nontaxable charges;

(E) amount on which retailer reported and paid Texas tax;

(F) all payments or other credits applied to the account of the purchaser;

(G) city, county, transit authority or special purpose district to which local taxes were reported; and

(H) the unpaid portion of the sale price assigned.

(4) Sales tax is due on the sale of a repossessed item, irrespective of whether a vendor, mortgagee, secured party, assignee, trustee, sheriff, or an officer of the court has sold the item, unless the sale is otherwise exempt. If the vendor, mortgagee, secured party, assignee, trustee, sheriff, or officer of the court does not collect the tax, the purchaser must remit the tax directly to the comptroller.

(f) Interest on sales tax. This section will refer to the terms "interest" and "time price differential" as interest. The term "credit" includes all deferred payment agreements.

(1) Sellers on a cash basis of accounting who sell taxable items on credit and charge interest on the amount of credit extended, including sales tax, are required to remit to the comptroller a portion of the interest that has been collected on the state and local taxes.

(2) If the amount of interest charged on the tax is 18% or less, the seller must remit to the comptroller one-half of the interest charged on the tax.

(3) If the amount of interest charged on the tax is greater than 18%, the seller must remit the amount of interest charged less 9%. For example, 21% charged less 9% deduction equals 12% interest remitted. A seller will not be allowed the 9% deduction if the interest rate charged on sales tax differs from the interest rate charged on the sales price of the taxable item.

(4) In determining the amount of interest to be remitted to the comptroller, a seller does not need to calculate the interest on each individual account. A formula for the calculation may be used if the formula correctly reflects the amount of interest collected. The formula will be subject to verification upon audit of the taxpayer's records.

(5) Except for the provisions of Texas Tax Code, §151.423 and §151.424, all reporting, collection, refund, and penalty provisions of Texas Tax Code, Chapter 151, including assessment of penalty and interest, apply to interest due.

(g) Trade-ins. In this subsection, a trade-in is considered as a taxable item that is being used to reduce the purchase price of another taxable item.

(1) The sales price of a taxable item does not include the value of a trade-in that a seller takes as all or part of the consideration for a sale of a taxable item of the same type that is normally sold in the regular course of business. For example, sales tax will be due only on the difference between the amount allowed on an old piano taken in trade and the sales price of a new piano.

(2) The sales price of a taxable item does include the value of a trade-in that a seller takes as all or part of the consideration for the sale of a taxable item, if the trade-in is a different type from the type normally sold in the regular course of business. For example, a seller of pianos who takes a desk in trade as part of the sales price of a piano would collect sales tax on the retail sales price of the piano without any deduction for the value of the desk. In this situation, the seller and buyer are considered to be bartering. However, if a seller of pianos is also a seller of desks, the value of the desk would be allowed as a trade-in.

(3) Persons who remove items from a tax-free inventory for use as a trade-in owe sales tax on the cost price of the items. If both parties to a transaction remove items from a tax-free inventory to trade for other items that each party will use, the transaction will be regarded as barters by both parties. Each party to the barter will be required to collect sales tax on the retail sales price of the item being transferred. For example, a retailer of drill pipe trades pipe to a retailer of aircraft in exchange for an aircraft. Both retailers are trading the respective items for use, not resale. The pipe retailer must collect sales tax on the retail sales price of the pipe. The aircraft retailer must collect sales tax on the retail sales price of the aircraft.

(4) See §3.336 of this title (relating to Sales of Gold, Silver, Coins, and Currency) for information on persons who barter for taxable items with gold, silver, diamonds, or precious metals.

(h) Tax Code, §111.064, provides that interest will be paid on tax amounts found to be erroneously paid and claimed on a request for refund or in an audit. See also §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest).

(1) Tax paid on an account that is later determined to be uncollectible and written off as a bad debt for federal tax purposes is not tax paid in error and does not accrue interest.

(2) A request for refund, or an overpayment of tax in an audit, for a report period due before January 1, 2000, does not accrue interest.

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 November 1, 2002.

TRD-200207155
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: November 21, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 475-0387

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.560

The Comptroller of Public Accounts adopts an amendment to §3.560, concerning banking corporations, without changes to the proposed text as published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8898).

In accordance with Senate Bill 1125, 77th Legislature, 2001, new subsection (f)(3) provides apportionment guidelines for certain interest received from correspondent banks. New subsection (b)(3) provides a definition of "correspondent bank." The previous subsection (b)(3) that defined "legal domicile" has been moved to new subsection (b)(4). In accordance with the *Rylander v. Bandag Licensing Corporation* decision, subsection (c)(1) is being amended.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.106.

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 November 1, 2002.

TRD-200207157
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Effective date: November 21, 2002
Proposal publication date: September 20, 2002
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 407. ADMINISTRATION

37 TAC §407.3, §407.5

The Texas Commission on Fire Protection (TCFP) adopts amendments to §407.3, Historically Underutilized Businesses, and new §407.5, State Vehicle Management, without changes

to the text published in the July 26, 2002, issue of the *Texas Register* (27 TexReg 6668).

The amendments and new section clarify that the TCFP has adopted rules which are consistent with those of the Texas Building and Procurement Commission and keep the TCFP in compliance with Texas Government Code, §2171.1045, which requires the adoption of the new section.

The amendments to §407.3 update the agency name of the Texas Building and Procurement Commission from the "General Services Commission." New §407.5 establishes rules relating to the assignment and use of the commission's vehicles.

There were no comments received on the proposed amendments and new section.

The amendments and new section are adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §2161.003 and §2171.1045, which require state agencies to adopt rules consistent with those of the Texas Building and Procurement Commission relating to historically underutilized businesses and the use and assignment of agency vehicles, respectively.

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 31, 2002.

TRD-200207135
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Effective date: November 20, 2002
Proposal publication date: July 26, 2002
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CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §§421.1, 421.3, 421.5, 421.9, 421.11, 421.13, 421.17

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§421.1, 421.3, 421.5, 421.9, 421.11, 421.13, and 421.17, concerning standards for certification, without changes to the text published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7372).

The amendments clarify what a regulated position is, who is eligible to be appointed to a regulated position, and what the appointment process consists of.

The amendments to §§421.1, 421.3, 421.13, and 421.17 remove redundant language and make grammatical corrections. The amendments to §421.5 add and define the terms: appointment, fire department, and volunteer fire service organization. The amendments to §421.9 establish procedure for requesting appointment to a particular discipline. The amendments to §421.11 replace "assignment" with "appointment."

There were no comments received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum requirements for fire protection personnel; Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel; and Texas Government Code, §419.0341, which provides the TCFP with the authority to establish guidelines for certificate renewal for individual certificate holders.

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

Filed with the Office of the Secretary of State on October 31, 2002.

TRD-200207136
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Effective date: November 20, 2002
Proposal publication date: August 16, 2002
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS
SUBCHAPTER E. HOUSEHOLD DETERMINATION

40 TAC §3.501

The Texas Department of Human Services (DHS) adopts an amendment to §3.501 without changes to the proposed text published in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8736).

DHS undertook the amendment as part of an effort to simplify and integrate policy in order to implement the Texas Integrated Eligibility Redesign System (TIERS). TIERS is an automated system integrating Food Stamp, Temporary Assistance for Needy Families (TANF), and Medicaid programs. As part of its planning for TIERS, the agency identified that using the same eligibility standards for married minor parents and adults would simplify policy and promote the spirit of the Texas Family Code.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081.

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 28, 2002.

TRD-200207074
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Effective date: November 17, 2002
Proposal publication date: September 13, 2002
For further information, please call: (512) 438-3734

SUBCHAPTER G. RESOURCES

40 TAC §3.704

The Texas Department of Human Services (DHS) adopts an amendment to §3.704 without changes to the proposed text published in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8737).

DHS undertook the amendment as part of an effort to simplify and integrate policy for the Texas Integrated Eligibility Redesign System (TIERS). TIERS is an automated system integrating Food Stamp, Temporary Assistance for Needy Families (TANF), and Medicaid programs. The amendment allows these programs to operate under consistent resource polices that are more suited to integration under TIERS.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial and nutritional assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081 and §§33.001-33.027.

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 28, 2002.

TRD-200207075
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 17, 2002
Proposal publication date: September 13, 2002
For further information, please call: (512) 438-3734

SUBCHAPTER I. INCOME

40 TAC §3.902

The Texas Department of Human Services (DHS) adopts an amendment to §3.902 without changes to the proposed text published in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8738).

DHS undertook the amendment as part of its implementation of the Texas Integrated Eligibility Redesign System (TIERS). TIERS is an automated system integrating Food Stamp, Temporary Assistance for Needy Families (TANF), and Medicaid programs. The transition into a TIERS environment involves policy simplification across all program areas so that staff can use a single, integrated system to determine eligibility. This amendment provides the Food Stamp, TANF, and Medicaid programs with consistent deduction and unearned income policies that are more suited to integration under TIERS. DHS also initiated the amendment to update rule language in keeping with the federal Workforce Investment Act of 1998.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial and nutritional assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081 and §§33.001-33.027.

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 28, 2002.

TRD-200207076
Paul Leche
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Effective date: November 17, 2002
Proposal publication date: September 13, 2002
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SUBCHAPTER J. BUDGETING

40 TAC §3.1003

The Texas Department of Human Services (DHS) adopts an amendment to §3.1003 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8911).

DHS undertook the amendment as part of its process of integrating and simplifying policies for the new Texas Integrated Eligibility Redesign System (TIERS). Adding the farm loss deduction to the TANF and Medicaid programs allows all Texas Works programs to budget a farm loss the same way. While TANF and Medicaid programs already disallowed expenses from illegal activities as a self-employment cost of doing business, food stamp policy did not, so this amendment again provides for uniformity among the Texas Works programs. The uncapped excess shelter change allows for policy simplification, as well as improving service delivery and program access.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial and nutritional assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.081 and §§33.001-33.027.

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 29, 2002.

TRD-200207091
Paul Leche
General Counsel, Legal Services
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Effective date: November 18, 2002
Proposal publication date: September 20, 2002
For further information, please call: (512) 438-3734

CHAPTER 79. LEGAL SERVICES
SUBCHAPTER E. ADVISORY COMMITTEES

40 TAC §§79.401 - 79.404

The Texas Department of Human Services (DHS) adopts amendments to §§79.401- 79.404 in its Legal Services chapter. The amendment to §79.403 is adopted with changes to the proposed text published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8417). The amendments to §§79.401, 79.402, and 79.404 are adopted without changes to the proposed text published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8417).

DHS undertook the amendments because agency advisory committees needed reauthorization. While making the changes necessary for reauthorization, DHS decided to update all four of its rules on advisory committees to eliminate references to abolished advisory committees and to make these rules consistent with the current law and the current duties and practices of DHS.

DHS received no comments regarding adoption of the amendments; however, DHS initiated minor editorial changes to §79.403(a)(1) and (e)(10) to improve the accuracy and clarity of the section.

The amendments are adopted under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs; under the Health and Safety Code, Chapters 145, 242, and 247, which authorizes DHS to regulate certain providers of services; and under the Government Code, Chapter 2110, which regulates state agency advisory committees.

The amendments implement the Human Resources Code, §§22.0001-22.038 and §33.026; the Health and Safety Code, §142.015, §142.016, §242.303, and §247.006; and the Government Code, §§2110.001-2110.008.

§79.403. Mandated Advisory Committees.

(a) Aged and Disabled Advisory Committee.

(1) Legal base. The committee's legal base is the Human Resources Code, §22.010.

(2) Responsibilities. The committee advises DHS about developing policy, programs, and budget for the purpose of affecting immediate and long-range plans for services to the aged and persons with disabilities who are in institutional or community-based care.

(3) Structure.

(A) The committee has members consisting of advocates for the aged and people with disabilities, providers, and others with knowledge or interest in the program.

(B) Committee members serve four-year rotating terms, with one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is September 1, 2006.

(b) Advisory Committee on Assisted Living Facilities.

(1) Legal base. The committee's legal base is the Health and Safety Code, §247.006.

(2) Responsibilities. The committee advises DHS on standards for licensing assisted living facilities.

(3) Structure.

(A) The committee has nine members representing consumers, providers, and others, with at least one member with expertise in life safety code regulations, one representative of a nonprofit facility, and one family member of a resident in a facility.

(B) The commissioner of human services appoints two staff members from DHS to serve as non-voting members. In appointing staff members, the commissioner will appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.

(4) Abolishment date. The abolishment date is September 1, 2006.

(c) Nursing Facility Administrators Advisory Committee.

(1) Legal base. The committee's legal base is the Health and Safety Code, §242.303.

(2) Responsibilities. The committee:

(A) advises the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants;

(B) reviews and recommends rules and minimum standards of conduct for the practice of nursing facility administration; and

(C) reviews all complaints against administrators and makes recommendations to DHS regarding disciplinary actions.

(3) Structure.

(A) The committee has nine members appointed by the governor consisting of:

(i) three licensed nursing facility administrators, at least one of whom must represent a not-for- profit nursing facility;

(ii) one physician with experience in geriatrics who is not employed by a nursing facility;

(iii) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(iv) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(v) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(B) Committee members serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(C) Vacancies on the committee will be filled in the same manner in which the position was originally filled and will be filled by a person who meets the qualifications of the vacated position.

(4) Abolishment date. The abolishment date is September 1, 2006.

(5) Reimbursement. Members of the committee receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their duties.

(d) Home and Community Support Services Advisory Council.

(1) Legal base. The council's legal base is Health and Safety Code, §142.015.

(2) Structure. The council has 13 members who are appointed by the governor. The council includes three consumer representatives and ten non-consumer representatives as follows:

(A) three consumer representatives;

(B) two representatives of agencies that are licensed to provide certified home health services;

(C) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(D) three representatives of agencies that are licensed to provide hospice services with one representative appointed from:

(i) a community-based non-profit provider of hospice services;

(ii) a community-based proprietary provider of hospice services; and

(iii) a hospital-based provider of hospice services; and

(E) three representatives of agencies that are licensed to provide personal assistance services.

(3) Terms of office. The term of office of each member is two years.

(A) Members serve staggered terms so that the terms of seven members will expire on January 31 of each even-numbered year and the terms of six members will expire on January 31 of each odd-numbered year.

(B) Vacancies on the council are filled in the same manner in which the position was originally filled and are filled by a person who meets the qualifications of the vacated position.

(4) Officers. The council elects a presiding officer and an assistant presiding officer from among its members at its first meeting after August 31 of each year.

(A) Each officer serves until the next regular election of officers.

(B) The presiding officer presides at all council meetings at which he or she is in attendance, calls meetings in accordance with this subsection, appoints subcommittees of the council as necessary, and causes proper reports to be made to the Texas Board of Human Services. The presiding officer may serve as an ex-officio member of any subcommittee of the council.

(C) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer serves until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(D) A vacancy that occurs in the offices of presiding officer or assistant presiding officer is filled at the next council meeting.

(E) The presiding officer serves for one year but may not serve as presiding officer and/or assistant presiding officer for more than two years.

(F) The council may reference its officers by other terms, such as chairperson and vice- chairperson.

(5) Responsibilities.

(A) The council advises DHS on licensing standards and on the implementation of Health and Safety Code, Chapter 142.

(B) As required in Health and Safety Code, §142.009(l), the council makes recommendations for a memorandum of understanding (MOU) that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. Also, in accordance with Health and Safety Code, §142.009(l), the Health and Human Services Commission (HHSC) must review the recommendation of the council relating to the MOU before considering approval. The MOU must be approved by HHSC.

(C) At each meeting of the council, DHS provides an analysis of enforcement actions taken under this chapter, including the type of enforcement action, the results of the action, and the basis for the action. The council may advise DHS on its implementation of the enforcement provisions of the Health and Safety Code, Chapter 142.

(D) The council must meet as least once a year and may meet to conduct council business at other times at the discretion of the presiding officer, any three members of the council, or DHS's commissioner.

(i) DHS staff make meeting arrangements. DHS staff contact council members to determine availability for a meeting date and place.

(ii) DHS informs each member of the council of a council meeting at least five working days before the meeting.

(iii) A simple majority of the members of the council constitutes a quorum for the purpose of transacting official business.

(iv) The council is authorized to transact official business only when in a legally constituted meeting with quorum present.

(v) The agenda for each council meeting includes an item entitled public comment under which any person may address the council on matters relating to council business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(E) The council may establish subcommittees as necessary to assist the council in carrying out its duties.

(i) The presiding officer appoints members of the council to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the council to serve on subcommittees.

(ii) Subcommittees must meet when called by the subcommittee chairperson or when so directed by the council.

(iii) A subcommittee chairperson must make regular reports to the advisory council at each council meeting or in interim written reports as needed. The reports must include an executive summary or minutes of each subcommittee meeting.

(F) Members must attend council meetings as scheduled. Members must attend meetings of subcommittees to which they are assigned.

(i) A member must notify the presiding officer or appropriate DHS staff if he or she is unable to attend a scheduled meeting.

(ii) It is grounds for removal from the council if a member fails to meet council responsibilities for a substantial part of the term for which the member is appointed because of:

(I) illness or disability;

(II) absenteeism from more than half of the council and subcommittee meetings during a calendar year; or

(III) absenteeism from at least three consecutive council meetings.

(iii) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a member exists.

(G) The council must file an annual written report with the board.

(i) The report must list:

(I) the meeting dates of the council and any subcommittees;

(II) the attendance records of its members;

(III) a brief description of actions taken by the council;

(IV) a description of how the council has accomplished the tasks given to the council by the board;

(V) the status of any rules that were recommended by the council to the board; and

(VI) anticipated activities of the council for the next year.

(ii) The report must identify the costs related to the council's existence, including the cost of agency staff time spent in support of the council's activities.

(iii) The report must cover the meetings and activities in the immediate preceding 12 months and must be filed with the board each July. The report must be signed by the presiding officer and appropriate DHS staff.

(H) The council carries out any other tasks given to the council by the board.

(6) Abolishment. The abolishment date is September 1, 2006.

(7) Staff support. DHS provides staff support for the council.

(8) Procedures. *Roberts Rules of Order, Newly Revised*, are the basis of parliamentary decisions except where otherwise provided by law or rule.

(A) Once a quorum is established, a majority vote of the members present must approve any action taken by the council.

(B) Each member has one vote.

(C) A member may not authorize another individual to represent the member by proxy.

(D) The council must make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(E) DHS staff record minutes of each council meeting.

(i) A draft of the minutes approved by the presiding officer is provided to the board and each member of the council within 30 days of each meeting.

(ii) After approval by the council, the minutes must be signed by the presiding officer.

(9) Statement by members.

(A) The board, DHS, and the council are not bound in any way by any statement or action on the part of any council member except when a statement or action is in pursuit of specific instructions from the board, DHS, or council.

(B) The council and its members may not participate in legislative activity in the name of the board, DHS, or the council except with approval through DHS's legislative process. Council members are not prohibited from representing themselves or other entities in the legislative process.

(10) Reimbursement for expenses. In accordance with the requirements specified in the Government Code, Chapter 2110, a council member may receive reimbursement for the member's expenses incurred for each day the member engages in official business if authorized by the General Appropriations Act or budget execution process.

(A) No compensatory per diem is paid to council members unless required by law.

(B) A council member who is an employee of a state agency, other than DHS, may not receive reimbursement for expenses from DHS.

(C) A nonmember of the council who is appointed to serve on a subcommittee may not receive reimbursement for expenses from DHS.

(D) Each member who is to be reimbursed for expenses must submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each council meeting.

(E) Requests for reimbursement of expenses must be made on official state travel vouchers prepared by DHS staff.

(e) Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(1) Legal base. The Health and Safety Code, §142.016(b), requires the Texas Board of Human Services (board) and the Board of Nurse Examiners (BNE) to jointly establish and appoint the committee.

(2) Structure.

(A) DHS and BNE appoint the advisory committee that must include at a minimum:

(i) one representative from the BNE and one representative from DHS to serve as co-chairmen;

(ii) one representative from the Texas Department of Mental Health and Mental Retardation;

(iii) one representative from the Texas Department of Human Services;

(iv) one representative from the Texas Nurses Association;

(v) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(vi) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(vii) one representative of the Texas Respite Resource Network or its successor; and

(viii) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(B) The representatives from the organizations listed in subparagraph (A)(i)-(vii) of this paragraph may serve without further approval of the board or the BNE. The representatives of organizations described in subparagraph (A)(viii) of this paragraph must be approved by the board and the BNE before serving.

(3) Terms of office. The term of office of each member is six years. Members must serve after expiration of their term until a replacement is appointed.

(A) Members are appointed for staggered terms with the terms of an equivalent number of members expiring on January 31 of each even-numbered year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(4) Officers. The representatives from DHS and the BNE serve as co-chairmen of the committee.

(A) The co-chairmen preside at all committee meetings at which they are in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board.

(B) In the absence of one co-chairman, the appropriate state agency designates a temporary co-chairman. The temporary co-chairman acts in full authority for the designated period of time.

(5) Responsibilities.

(A) The committee advises the board and the BNE regarding the development, modification, or renewal of a memorandum of understanding (MOU) governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing.

(B) The committee carries out any other tasks given to the committee by the board and the BNE that are reasonable and necessary to accomplish the purpose of the MOU.

(C) The committee must meet as necessary to conduct committee business.

(i) A meeting may be called by agreement of DHS staff, BNE staff, and either the co-chairmen or at least three members of the committee.

(ii) DHS staff make meeting arrangements. DHS staff contact committee members to determine availability for a meeting date and place.

(iii) DHS staff inform each member of the committee of a committee meeting at least five working days before the meeting.

(iv) A simple majority of the members of the committee constitutes a quorum for the purpose of transacting official business.

(v) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(vi) The agenda for each committee meeting includes an item entitled public comment under which any person may address the committee on matters relating to committee business. The co-chairmen may establish procedures for public comment, including a time limit on each comment.

(D) The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(i) The co-chairmen appoints members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The co-chairmen may also appoint nonmembers of the committee to serve on subcommittees.

(ii) Subcommittees must meet when called by the subcommittee chairperson or when so directed by the committee.

(iii) A subcommittee chairperson must make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports must include an executive summary or minutes of each subcommittee meeting.

(E) Members must attend committee meetings as scheduled. Members must attend meetings of subcommittees to which they are assigned.

(i) A member must notify the presiding officer or appropriate DHS staff if he or she is unable to attend a scheduled meeting.

(ii) It is grounds for removal from the committee if a member fails to meet committee responsibilities for a substantial part of the term for which the member is appointed because of:

(I) illness or disability;

(II) absenteeism from more than half of the council and subcommittee meetings during a calendar year; or

(III) absenteeism from at least three consecutive council meetings.

(iii) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(6) Abolishment. The abolishment date is July 1, 2003.

(7) Staff. DHS staff, in conjunction with designated BNE staff, provide support for the committee.

(8) Procedures. *Roberts Rules of Order, Newly Revised*, is the basis of parliamentary decisions except where otherwise provided by law or rule.

(A) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(B) Each member has one vote.

(C) A member may not authorize another individual to represent the member by proxy.

(D) The committee must make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(E) DHS staff record minutes of each committee meeting.

(i) A draft of the minutes approved by the co-chairmen must be provided to the board, the BNE designated staff, and each member of the committee within 30 days of each meeting.

(ii) After approval by the committee, the minutes must be signed by the co-chairmen.

(9) Responsibility of DHS and BNE. DHS and the BNE annually review and renew or modify the MOU as necessary.

(10) Statement by members. The board, DHS, and the committee are not bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, DHS, or committee.

(f) Special Nutrition Programs (SNP) Advisory Committee.

(1) Legal basis. The committee's legal base is the Human Resources Code, §33.026 (federal Child and Adult Care Food Program).

(2) Responsibilities.

(A) The committee advises DHS on policies, procedures, and management issues of all child nutrition and commodity distribution programs. Before adopting or changing a DHS rule section or policy relating to the federal Child and Adult Care Food Program, DHS must submit the proposed action to the DHS advisory committee on that program for comment, unless immediate action is required by federal law. If immediate action is required by federal law, DHS must submit the action for comment at the earliest possible date.

(B) The DHS advisory committee on the federal nutrition programs may:

(i) conduct public hearings in accordance with DHS procedures;

(ii) refer issues relating to the program to the board for discussion; and

(iii) recommend modifications to DHS training programs for sponsoring organizations and other persons participating in the program.

(3) Structure.

(A) The committee membership of eleven members is demographically and geographically balanced. Members represent each of the Special Nutrition Programs and may include parents, providers, concerned citizens, and other advocates who share an interest in the programs.

(B) Representatives of state agencies and federal agencies with an interest or role in the committee's field of work serve as ex-officio members. Ex-officio members serve until they are replaced by the agency they represent.

(C) Committee members serve four-year rotating terms, with approximately one-fourth of the membership rotating off service each year.

(D) The committee meets at least four times per year.

(4) Abolishment date. The abolishment date is September 1, 2006.

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 29, 2002.

TRD-200207092
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 18, 2002
Proposal publication date: September 6, 2002
For further information, please call: (512) 438-3734

SUBCHAPTER T. ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS

40 TAC §79.1917

The Texas Department of Human Services (DHS) adopts an amendment to §79.1917 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8919).

Justification for the amendment is to comply with federal law at 7 Code of Federal Regulations §273.16(b)(4), which changed the dollar amount of a disqualifying offense from the Food Stamp Program from one item of $500 or more to an aggregate amount of $500 or more.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.0001-22.038 and §§33.001-33.027.

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 29, 2002.

TRD-200207095
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 18, 2002
Proposal publication date: September 20, 2002
For further information, please call: (512) 438-3734

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER G. DONATIONS

43 TAC §1.503, §1.504

The Texas Department of Transportation (department) adopts amendments to §1.503 and §1.504, concerning donations. Section 1.503 and §1.504 are adopted without changes to the proposed text as published in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8756) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §201.206, authorizes the department to accept, from any source, a donation or contribution in any form, including realty, personalty, money, materials, or services. Government Code, §575.003, provides that the board of a state agency must acknowledge a donation of $500 or more in an open meeting not later than the 90th day after the date the gift is accepted. The Texas Transportation Commission (commission) has previously adopted rules, codified as 43 TAC §§1.500-1.506, implementing these two statutes.

Existing §1.503 requires the prior approval of the commission for the acceptance of a donation valued at $500 or more. These amendments allow the executive director or designee to approve the acceptance of a donation of $500 or more for reimbursement of an employee's travel for the purpose of being a speaker at a conference. The acceptance must be acknowledged by the commission not later than the 60th day after the date the donation is accepted. This amendment is necessary to ensure the timely processing of a request to reimburse an employee for travel of this kind. The commission typically meets only once per month, and an offer to reimburse travel expenses may arise at any time and require a rapid response.

Existing §1.503(b)(3) prohibits the acceptance of a donation if the donor is subject to department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment or claim with or against the department. Section 1.503(c) authorizes the commission to waive this prohibition if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties. This subsection may be interpreted to allow only the commission to approve the acceptance of a donation from a donor described in subsection (b)(3), regardless of the value of the donation. To expedite the donation of small donations, subsection (c) is revised to state that the commission "or the department" may waive the provisions of subsection (b)(3). This change clarifies that the executive director or designee may approve the acceptance of donations valued under $500 in these circumstances.

Other non-substantive revisions to §1.503 improve clarity and readability.

The amendments to §1.504 increase the threshold for when a donation agreement is needed from $250 to $1,500. An agreement will also be required, regardless of the dollar amount, if the donation involves real property or if it is necessary to warrant or indemnify the department as to ownership, prevent possible claims that could result from the use of the property, or document conditions of the gift. These amendments add that relocation benefits, if any, must be included in the agreement.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207147
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 21, 2002
Proposal publication date: September 13, 2002
For further information, please call: (512) 463-8630

CHAPTER 4. EMPLOYMENT PRACTICES

SUBCHAPTER D. SUBSTANCE ABUSE PROGRAM

The Texas Department of Transportation (department) adopts the repeal of §§4.30-4.40 and simultaneously adopts new §§4.30-4.46, concerning the Substance Abuse Program. Sections 4.30-4.46 are adopted without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7061) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The department's substance abuse rules implement the department's Substance Abuse Program. Experience with the program has identified a need to update some standards to prevent the evasion of the intent of the rules.

In addition, the existing rules have proven to be excessively long and difficult to follow. By rearranging the rules, eliminating unnecessary duplication, avoiding the unnecessary repetition of federal requirements, and simplifying the language, it has been possible to reduce the size of the rules by approximately one-half. The revised rules contain, so far as possible, plainer language, shorter sections, fewer definitions, and fewer unnecessary cross-references. The effect should be a set of rules that will be easier for employees, supervisors, and others to understand and implement. Except as noted, the reorganization of the rules is intended to have no substantive effect.

New §4.30 is based on existing §4.30.

New §4.31 is based on existing §4.31. It eliminates about half the definitions in the existing rule as unnecessary. Most of the remaining definitions are closely modeled on the existing rules, with the following exceptions.

New §4.31(3) defines alcohol- or drug-related driving offense. This definition replaces existing §4.31(15), conviction of DUI/DWI. Under the prior standard, it was possible for an employee to avoid administrative or disciplinary action by pleading

to a slightly different offense, such as reckless endangerment, instead of driving while intoxicated or driving while under the influence. Indeed, even conviction for a far more serious offense, such as involuntary manslaughter, would not trigger administrative or disciplinary action because it is not technically a conviction for DUI/DWI. The new definition closes this loophole and treats all alcohol- and drug-related driving offenses alike.

New §4.31(7) adds a definition of critical duties to clarify references to the duties listed in existing §4.32(b)(2)(C).

New §4.31(10) incorporates the existing definition of driving for the department. It adds a new sentence restating the department's current position that an employee is considered to hold a position that involves driving for the department if the position may require driving for the department. This would cover the overwhelming majority of department employees.

New §4.31(12) clarifies that temporary recruitment employees are considered employees for purposes of the Substance Abuse Program.

New §4.31(14) is supplemented by adding that the definition of EAP counselor includes a substance abuse professional within the meaning of the rules of the Office of the Secretary of Transportation at 49 CFR, Part 40.

New §4.31(21) sets standards for defining safety-sensitive activities, but delegates the determination of particular activities to the director of the Human Resources Division. This will provide greater certainty and flexibility than existing §4.36(a), which attempts to provide a detailed list of all job functions that are safety sensitive. The detailed approach has proved cumbersome and inflexible in practice. The general standards are the same as in the existing rules.

New §4.31(23) similarly delegates the determination of safety-sensitive positions to the director of the Human Resources Division. The standard for determining a safety-sensitive position is the same as in the existing rules.

New §4.31(28) defines supervisor to include employees technically classified as managers, supervisors, lead workers, and project leaders. This permits employees with effective supervisory responsibilities to be trained and to make designated substance abuse decisions.

New §4.31(29) defines alcohol and drug use to include being under the influence of alcohol or a drug and to include the use of inhalants. This definition simplifies references throughout the rules by avoiding unnecessary repetition of multiple, related types of conduct.

New §4.31(31) defines workplace as any location at which an employee works. This could include, for example, a construction site or a vehicle in which an employee is driving for the department.

New §4.32 is based on existing §4.32(a)(6)-(8).

New §4.33 is based on existing §4.32(a)(1)-(5) and §4.32(c)(1)(A).

New §4.34 is based on existing §§4.32(a) and (c), 4.34(e), 4.35(d), 4.36(c)(1), and 4.36(d). It brings together a series of related prohibitions relating to the possession or use of illegal drugs and the commission of criminal offenses involving illegal drugs. No substantive change is intended.

New §4.35 is based on existing §§4.32(b), (c), and (d), 4.34(e), 4.35(d), and 4.36(d). It brings together a series of related prohibitions relating to administrative and disciplinary actions that may be taken by the department in response to the use of alcohol or drugs in the workplace.

New §4.35(c) tracks existing §4.32(c)(1)(B)(iii) governing the department's reaction when an employee is reasonably suspected of working under the influence of alcohol or drugs, but there are insufficient observations and documentation to warrant administrative or disciplinary action. Like the existing rule, the new rule provides that the employee will be given an opportunity to explain the facts giving rise to the reasonable suspicion. The new rule, however, eliminates the requirement that this explanation be requested in a specified written form. This change will allow the department greater flexibility in appropriately addressing a wide range of potential behaviors.

New §4.35(g) clarifies that the department will not hire a final applicant if the applicant has engaged in conduct that would justify terminating an employee. The provision avoids unnecessary duplication that would be caused by referencing final applicants in each rule provision prohibiting certain conduct. It also places limits on the hiring or rehiring of employees who are likely to generate substance abuse problems in the future.

New §4.36 is based on existing §4.32(b)(1)-(3). No substantive change is intended.

New §4.37 is based on existing §4.32(c)(1) and (8). No substantive change is intended.

New §4.38 is based on existing §4.37. The procedures governing drug tests have been greatly shortened by cross-referencing the federal standards instead of restating them.

New §4.38(c) is added to require a retest if a urine specimen shows chemical evidence of having been diluted.

New §4.39 is based on existing §§4.32(c)(1)(B)(viii), 4.34(d)(3), 4.35(c)(4), and 4.36(c)(3). It brings together a series of related provisions dealing with refusals by employees to submit to testing.

New §4.39(c) contains an expanded list of conduct that will be considered a refusal to test. New provisions are incorporated in paragraphs (3), (4), (5), (6), and (9). The additions will make it more difficult for someone to avoid proper testing or to obstruct the process.

New §4.40 is based on existing §4.32(c)(1) and (d). No substantive change is intended.

New §4.41 is based on existing §4.32(c)(4). It addresses the voluntary admission of an alcohol or drug problem by an employee.

New §4.41(a) is added to establish the scope of the section.

New §4.41(b)(1) is added to address driving by an employee who has admitted an alcohol or drug problem.

New §4.41(c) is added to meet the requirements of the Federal Motor Carrier Safety Administration set forth in 49 CFR §382.121. It establishes a program to encourage the voluntary admission of alcohol or drug problems by commercial drivers, safety-sensitive employees, and vessel crewmembers.

New §4.42 is based on existing §4.32(c)(9). The new rule clarifies that recurrence of substance abuse includes the prior service of an employee who has been rehired after a break in service.

New §4.43 is based on existing §4.33. No substantive change is intended.

New §4.44 is based on existing §§4.34, 4.35, and 4.36. It brings together a series of related provisions dealing with substance abuse involving commercial drivers, safety-sensitive employees, and vessel crewmembers. Like the existing rule, the new rule provides that the department may waive a pre-employment drug test for an internal transfer if the transferring employee has taken and passed a drug test within the preceding three years. It adds the requirement that this waiver will only be available if the employee has not been mandatorily referred to the Employee Assistance Program.

New §4.45 is based on existing §4.38 and §4.40. No substantive change is intended.

New §4.46 is based on existing §4.32(e). No substantive change is intended.

Several provisions of the old rules are eliminated as unnecessary. Existing §4.32(c)(6)(D) is removed. This provision required a signed written statement from an employee who admits selling drugs. It is eliminated because the sanction for admitting to selling drugs and for refusing to sign the statement were both termination, and therefore the statement served no purpose. Existing §4.39 is removed. This provision stated that an employee could use the internal grievance process if affected by an adverse personnel action under this subchapter. The internal grievance process is not incorporated in the Texas Transportation Commission's (commission's) rules; rather, it is an informal management appeal established and governed by the department's human resources policy. Therefore, the reference in the substance abuse rules is unnecessary and inappropriate.

COMMENTS

On August 9, 2002, the proposed Substance Abuse Program Rules were published in the Texas Register. Eight persons submitted comments on the rules.

Comment: One commenter asked if other states have the same rules, policies, and benefits as the proposed rules.

Response: The department has not investigated other states' current rules, policies, and benefits. The department's rules are not based on those of other states. Rather, the department's rules are based on the commission's longstanding commitment to a drug-free workplace and on federal requirements governing commercial drivers and vessel crewmembers.

Comment: One commenter suggested that the department include a written explanation of the rules so employees can better understand them.

Response: A written explanation of the purpose of the rules is provided in §4.30. To the extent that the rules have changed or comments have been made, a more detailed written explanation is provided in the preamble. The department's Human Resources Division has also provided an informal summary of changes in the rules.

Comment: With reference to §4.30, one commenter asked the difference between the responsibility of an employee for the employee's actions and the responsibility of a child to learn at school. The commenter further asked whether it is a school's responsibility to educate a child or the responsibility of the child to be educated.

Response: The relevance of this comment to the department's Substance Abuse Program is unclear. Employees are responsible for their actions, while the department is responsible for maintaining and enhancing the productivity of its workforce, for protecting the safety of the motoring public and of department employees, and for protecting itself from the risk of legal liability. The department has no involvement with the education of children and therefore is not in a position to respond to portions of this comment that relate to the responsibilities of children and schools.

Comment: One commenter questioned why the department rehabilitates employees. This comment was made with reference to several rules, including §4.30, §4.31(3), §4.31(18), and §4.44(c)(1)(A). The commenter further questioned an employee's commitment or incentive to be rehabilitated when the department pays for most of the cost of rehabilitation. The commenter also expressed concern that the department supports the employee financially by providing rehabilitation for substance abuse, but not for other criminal acts. The commenter noted that a referral is not required for employees who commit other criminal acts.

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. The department pays for rehabilitation services to enhance and maintain the productivity of department employees and to be fair to all employees. Thus, the department has chosen to provide an Employee Assistance Program because it is in the department's best interest to do so. Employees will still have a strong incentive to rehabilitate themselves because rehabilitation is necessary for continued employment with the department, in addition to any health or law-enforcement concerns they may have. The rules do not provide benefits to persons because they may have violated the law, nor do the rules duplicate the criminal justice system; rather, the department provides benefits that will protect the public investment in its workforce and assist employees in becoming and remaining productive. These benefits apply to a wide range of employees who need them, whether or not that need first came to the department's attention because of an alleged violation of criminal law. The department is unaware of any other situations, including violations of criminal laws, in which the same department goals would be advanced by providing additional rehabilitation services.

Comment: One commenter suggested that the department not pay a vendor to provide Employee Assistance Program services and instead hire only two or three substance abuse professionals to meet federal requirements. The commenter questioned why the department does not trust department employees to monitor and establish the number and frequency of follow-up tests. This comment was made in several contexts, including §4.31(3) and §4.35(e)(2)(A). It also referred to §4.36(a)(4), but was apparently intended to refer to §4.37(a)(4).

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. With regard to commercial drivers and vessel crewmembers, the department is complying with federal regulations by relying on outside vendors to establish follow-up treatment schedules. With regard to other employees, the department relies on outside vendors to perform this function to avoid the appearance or actuality

of a conflict of interest. Department employees are responsible for monitoring and ensuring completion of follow-up testing schedules.

Comment: With reference to §4.31(3), one commenter questioned whether employees who are unfamiliar with legal terminology will understand the meaning of deferred adjudication.

Response: The comment refers to a provision that was already in the department's rules, that has not been changed by these amendments, and that has not posed a significant problem. Use of the term deferred adjudication has not raised ambiguities in the past, and there is no substitute phrase that would be equally precise and more understandable.

Comment: With reference to §4.31(3), one commenter stated that the department has no business referring an employee to the Employee Assistance Program if the employee commits an alcohol- or drug-related driving offense in a private automobile. This commenter also suggested that a referral in this instance would be beyond federal requirements.

Response: Federal requirements apply only to commercial drivers and to vessel crewmembers; all other requirements in the rules are adopted because it is in the interest of the department to do so. If an employee demonstrates, through conduct in a private vehicle, that the employee may pose a threat to the motoring public or to other department employees if permitted to drive for the department, the department can and will take steps to reduce the threat.

Comment: With reference to various sections, including §4.31(6), §4.31(14), §4.31(27), §4.31(18), §4.35(e)(2)(A), and §4.40(b), two commenters questioned why the department requires rehabilitation that is in addition to the rehabilitation requirements that may be imposed by courts. They noted that an employee may therefore be required to go through two separate programs. One of the commenters suggested that the definitions of treatment and completion of treatment be changed so treatment can be handled by a court-ordered substance abuse professional instead of by an Employee Assistance Program counselor.

Response: The comments refer to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. Court-ordered treatment in response to a criminal violation serves the ends of the criminal justice system and is not sufficient by itself to meet the department's needs. Nonetheless, there is usually no duplication. The definition of EAP Counselor in §4.31(14) already includes substance abuse professionals, including those appointed by courts. Thus, court-ordered treatment by substance abuse professionals already counts toward the treatment requirements imposed by these rules.

Comment: With reference to §4.31(7), §4.43(c), and §4.43(e)(4), two commenters recommended that the department allow employees to drive with an occupational license without regard to the completion of treatment. One commenter further stated that the rules should clarify when employees can drive for the department with an occupational license.

Response: The comments refer to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. A court-issued occupational license serves different purposes than the department's rules. The department's paramount goal is to protect the safety of the motoring public and the department's employees, and the department also has an obligation to protect itself from legal liability. Given these facts, the department has determined that it would be imprudent to permit an employee to drive on department business until initial treatment is complete. Once initial treatment is complete, an occupational license is sufficient to permit an employee to drive for the department under §4.43(c). The rules indicate clearly that an occupational license is sufficient to allow an employee to drive for the department whenever a full driver's license would be sufficient. A referred employee who has not completed initial treatment may not drive for the department, whether the employee has a driver's license or not.

Comment: One commenter expressed concern about the definition of driving for the department in §4.31(10). The commenter stated that the word aircraft is only in the rules once and therefore should be deleted if the provisions of this program do not apply to aircraft pilots or crewmembers.

Response: The operation of aircraft is included in the definition of driving for the department to cover employees who may be piloting aircraft for the department. It is not necessary to make repeated references to aircraft because each reference to driving for the department incorporates the entire definition, including its applicability to aircraft.

Comment: One commenter suggested adding "but not limited to" to the definition of the Employee Assistance Program in §4.31(13).

Response: "But not limited to" is unnecessary because the Code Construction Act, Government Code, §311.005(13), provides that "including" is a term of enlargement and not of limitation.

Comment: With reference to §4.31(14), one commenter suggested adding Licensed Professional Counselors to the definition of EAP counselors because they are licensed to perform Employee Assistance Program counseling in Texas.

Response: The definition of EAP counselor already includes Licensed Professional Counselors as "employee assistance professionals licensed or certified by the Employee Assistance Professionals Association, Inc., or another regulating board."

Comment: With reference to §4.31(14), one commenter suggested that all EAP counselors be required to take training in the department's substance abuse policies and procedures.

Response: The comment refers to a provision that was already in the department's rules, that has not been changed by these amendments, and that has not posed a significant problem. EAP counselors do receive information about the department policies and procedures; this information is an adequate substitute for more formal training.

Comment: With reference to §4.31(18), one commenter felt that an employee's final evaluation, which may take up to a year, should be made to coincide with court-ordered treatment so employees can return to critical duties. The commenter also felt that EAP counselors are milking the system to receive more payments by not providing employees with a return-to-work form earlier.

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. EAP counselors usually provide a return-to-work form within the

first few months so employees may return to critical duties. Until an employee has completed initial treatment, the department considers it an unacceptable risk to permit them to perform critical duties. The department will not tolerate abuse of the system by EAP counselors. The department will investigate any allegations of abuse vigorously and will act as necessary to prevent abuse.

Comment: One commenter questioned the definition of possession of alcohol or drugs in §4.31(20). The commenter wanted to know if this includes possession on all department property and at all times, including a personal vehicle in a department parking lot after work hours.

Response: The possession of alcohol or drugs is addressed throughout the rules only with regard to employees who are on duty. It does not apply to after work hours.

Comment: One commenter questioned the criteria in the definition of serious accident in §4.31(24). The commenter asked whether this includes damage that occurs on public or private property.

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. The definition relates only to property damage to vehicles; damage to other personal or real property is not included in the definition.

Comment: One commenter questioned the definition of substance control officer in §4.31(26). The commenter asked whether this person is a human resource employee and holds a title such as a safety officer. The commenter suggested that employees may not know the identities of their substance control officers.

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. Each district engineer, division director, or office director designates employees to serve as substance control officers. The list of substance control officers is available to employees on the department's intranet site.

Comment: One commenter expressed concern about the definition of supervisor in §4.31(28). Because it allows project leaders and lead workers to observe behavior and recommend reasonable cause testing, there was a fear that personality issues may intrude on the decision-making process.

Response: Employees often work under the direction of persons who are not their immediate supervisors, and therefore the actual supervisors may not be in a position to make prompt recommendations about the need to take action. Nonetheless, recommendations may only be made by persons who have received substance abuse training, and this training will ensure that recommendations are made on an informed basis. Moreover, a final decision on reasonable cause testing also requires the approval of the Human Resources Division and the relevant district engineer, division director, or office director. The department will not tolerate misuse of the program for personal reasons by any employee, whether or not that employee is a supervisor.

Comment: With reference to §4.33(c) and §4.34(b), one commenter stated that federal regulations do not cover employees who are selling, distributing, transporting, or manufacturing drugs outside the workplace. The commenter questioned why this wording is included and suggested that the provisions should not apply to conduct outside the workplace. The commenter also questioned how a supervisor would know of events occurring outside the workplace.

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. Federal requirements apply only to commercial drivers and to vessel crewmembers; all other requirements in the rules are adopted because it is in the interest of the department to do so. If an employee demonstrates, through conduct outside the workplace, that the employee may pose a threat to the motoring public or to other department employees, the department can and will take steps to reduce the threat. Experience has shown that supervisors usually learn of these facts from law enforcement personnel, the media, or the employees themselves.

Comment: With reference to §4.33(d), one commenter recommended preventing impaired employees from operating motor-driven equipment.

Response: A specific reference to the operation of motor-driven equipment is unnecessary because an employee is not permitted to perform any work while impaired, including the operation of motor-driven equipment.

Comment: With reference to §4.33(e), one commenter recommended adding managers, supervisors, project leaders, lead workers, and others to the definition of a supervisor.

Response: These persons are encompassed within the definition of supervisor in 4.31(28).

Comment: With reference to §4.34(b)(4), one commenter advocated the automatic termination of employees who use or possess drugs in the workplace.

Response: The comment refers to a provision that was already in the department's rules, that has not been changed by these amendments, and that has not posed a significant problem. The department chooses to rehabilitate employees to enhance and maintain the productivity of department employees and to be fair to all employees.

Comment: With reference to §4.34(b)(5), one commenter questioned why the department does not terminate employees for alcohol- and drug-related driving offenses outside the workplace, just as the department terminates employees who use drugs outside the workplace.

Response: The department does not take any action based on the use of alcohol or drugs outside the workplace unless there is an alcohol- or drug-related driving offense. The department will terminate an employee if an employee sells drugs outside the workplace. The sale of drugs is a serious criminal offense, and there is a significant risk that an employee who engages in that conduct may endanger the safety of the motoring public and of other employees, as well as possibly subjecting the department to the risk of legal liability.

Comment: One commenter addressed the requirement that a substance control officer must contact the Office of General Counsel or the Human Resources Division when an employee is reasonably suspected of serious drug violations before the matter is turned over to law enforcement. The commenter suggested that some employees may not be comfortable with this language because it may appear to them to be intrusive. To strong advocates for civil liberties, the commenter indicated, this provision may seem highly suspect or reminiscent of big

brother tactics. The comment referred to §4.34(a)(6), but was apparently intended to refer to §4.34(b)(6).

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. It would be inappropriate for the department to conceal what may be a major criminal violation from law enforcement authorities. Internal notifications are necessary for the protection of the department and to ensure that the department is acting on the basis of reliable information.

Comment: With reference to §4.36(b)(1), which addresses the pre-employment testing of persons who drive for the department, one commenter suggested also requiring testing for persons who perform safety-sensitive activities.

Response: Testing for safety-sensitive employees is required under §4.44(c)(1).

Comment: With reference to §4.36(c)(1), one commenter recommended that supervisory training be reduced from four hours to two hours.

Response: The rules do not address the length of training, and therefore no change in the rules is required. The suggestion will be considered in implementing future training plans.

Comment: With reference to §4.37, one commenter recommended deleting references to refusal to test from this section because it is covered later in the rules.

Response: Refusal to test is included in §4.37(a) to provide a complete list of reasons for mandatory referral. Refusal to test is included in §4.37(b) because the treatment of employees during the initial 6-month probation period is not covered later in the rules.

Comment: One commenter suggested that an employee be terminated if the employee has a positive drug test, has an alcohol test of 0.04 or greater, or is a commercial driver, safety-sensitive employee, or vessel crewmember who refuses to test. This comment referred to §4.37(s)(1), but was apparently intended to refer to §4.37(a)(1).

Response: The comment refers to provisions that were already in the department's rules, that have not been changed by these amendments, and that have not posed a significant problem. With regard to positive drug tests and alcohol tests greater than 0.04 for most employees, the department requires the employee to undergo treatment to maintain the productivity of department employees and to be fair to all employees. With regard to commercial drivers and vessel crewmembers who have positive drug tests and alcohol tests greater than 0.04, federal law requires referral, and the department treats safety-sensitive employees the same because the relevant considerations are the same. Commercial drivers, vessel crewmembers, and safety-sensitive employees who refuse to test are terminated from the department under §4.39(b).

Comment: With reference to §4.39(a) and (b), one commenter suggested including new employees within their initial 6-month probationary period in the list of employees who will be mandatorily referred or terminated for refusing to test.

Response: The treatment of employees during their initial 6-month probation periods is covered in §4.37(b).

Comment: With reference to §4.40, one commenter recommended that EAP counselors advise employees of treatment plans.

Response: Each employee is advised of that employee's treatment plan when the EAP counselor requires the employee to sign the treatment plan.

Comment: With reference to §4.41, one commenter expressed concern that drug abusers are very savvy at manipulating the system and recommended adding that repeated voluntary admissions are unacceptable.

Response: The department will not terminate an employee solely because the employee voluntarily admitted to a substance abuse problem. This policy enhances safety by encouraging employees to admit problems that otherwise might not have come to the department's attention and to do it at a stage before the department has observed an adverse effect on safety or work performance. The department considers it highly unlikely that an employee could escape disciplinary action through repeated voluntary admissions. A voluntary admission will cause an employee to be referred for treatment, and the employee must complete treatment successfully to remain employed. Moreover, disciplinary action may be appropriate if the department has any indication of a problem from any source other than the employee's voluntary admission.

Comment: With reference to §4.41(d), one commenter questioned whether drivers are safety sensitive or whether jobs are safety sensitive.

Response: Safety-sensitive activities are defined in §4.31(21). Safety-sensitive positions are defined in §4.31(22). Thus, depending on the language and the context, either an activity or a position may be safety sensitive. Driving may be a safety-sensitive activity if it involves any unusual risk.

Comment: With reference to §4.43(d)(1), one commenter expressed concern that an employee may not know when the employee's driver's license has been suspended.

Response: The comment refers to a provision that was already in the department's rules, that has not been changed by these amendments, and that has not posed a significant problem. It is not the department's responsibility to monitor the validity of driver's licenses or to inform employees of administrative actions suspending or canceling driver's licenses. This responsibility belongs to the Department of Public Safety. The department notes, however, that constitutional due process, statutes, and administrative rules govern the notice that must be given. The provision of notice is considered adequate to support a criminal conviction for driving without a license. Under these circumstances, the department is confident that employees will be adequately informed.

Comment: With reference to §4.44(c)(1)(A), which deals with the testing of employees who are being transferred or promoted into positions as commercial drivers, safety-sensitive employees, or vessel crewmembers, one commenter questioned if this is a requirement under the Drug Free Workplace Act of 1988.

Response: This rule is not required by the Drug Free Workplace Act of 1988. The department has chosen this approach to promote the safety of the motoring public and of department employees and to reduce the possibility of legal liability.

Comment: To assist employees in understanding the proposed rules, the department disseminated a "Summary of Proposed

Changes to the Substance Abuse Program Rules." One commenter suggested grammatical changes to the wording of the summary.

Response: The wording in the summary is not the same as the wording in the rules, and the comment does not apply to the wording in the rules.

43 TAC §§4.30 - 4.40

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

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

Filed with the Office of the Secretary of State on November 1, 2002.

TRD-200207148
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 21, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-8630

43 TAC §§4.30 - 4.46

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

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

Filed with the Office of the Secretary of State on November 1, 2002.

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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER A. TRANSPORTATION PLANNING

43 TAC §§15.2, 15.3, 15.7, 15.8

The Texas Department of Transportation (department) adopts amendments to §§15.2, 15.3, 15.7, and 15.8, concerning transportation planning. Sections 15.2 and 15.3 are adopted with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7071). Sections 15.7 and 15.8 are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Federal transportation laws in Titles 23 and 49, United States Code, grant governors of states certain powers and responsibilities relating to transportation planning, including the responsibility to designate metropolitan planning organizations (MPOs), to determine the boundaries of metropolitan planning areas, and to approve statewide and metropolitan transportation improvement programs and any amendments. Previous governors have delegated these powers and responsibilities to the Texas Transportation Commission (commission) or the executive director of the department. Pursuant to these delegations, the commission previously adopted 43 TAC §§15.1-15.8 to prescribe how the commission or the executive director of the department would carry out these powers and responsibilities.

In a letter to Transportation Commission Chairman John W. Johnson dated June 13, 2002, Governor Rick Perry delegated certain powers and responsibilities under Titles 23 and 49, United States Code, to the commission or its designees. Governor Perry retained the power and responsibility to designate or redesignate MPOs, to determine the boundaries of metropolitan planning areas, and to request the designation of additional transportation management areas.

The Transportation Equity Act for the 21st Century (TEA-21) repealed 23 U.S.C. §157, relating to the minimum allocation of funds to the states. Provisions in §15.2 and §15.7 relating to minimum allocation funds are no longer applicable. TEA-21 also amended 23 U.S.C. §134(c), relating to metropolitan area boundaries, to modify the transportation planning area boundary relationship to nonattainment area boundaries. Generally, future expansions of nonattainment area boundaries do not force expansion of the transportation planning area unless agreed to by the governor and the MPO. In order to comply with the requirements of federal law, provisions in §15.3 relating to metropolitan planning area boundaries have been amended.

Section 15.2 is amended to define governor to mean the governor of the State of Texas or his or her designee. This definition recognizes the governor's role in the transportation planning process, and recognizes that future governors may decide to delegate or retain powers and responsibilities in a manner that differs from their predecessor, without requiring an amendment to the rules. Section 15.2 is also amended to delete terms no longer used in the rules and to correct citations to federal law.

In order to comply with Governors Perry's delegation, §15.3 is amended to provide that the governor will designate or redesignate MPOs and will approve metropolitan planning area boundaries. In order to comply with the requirements of federal law, §15.3 is amended to provide that in urbanized areas previously designated as nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning area boundaries in existence as of the date of enactment of TEA-21 will be retained. Expanded nonattainment area boundaries will be included within the boundaries of the metropolitan planning area to the extent agreed to by the governor and the MPO. Section 15.3 is also amended to provide that metropolitan planning area boundaries may include new nonattainment areas as agreed to by the governor and the MPO.

Sections 15.3, 15.7, and 15.8 are amended to recognize that the governor must approve metropolitan and rural transportation improvement programs (TIPs) and any amendments, and the statewide transportation improvement program (STIP) and any amendments. This authority was delegated to the commission or its designees in Governor Perry's June 13, 2002, letter. Those sections are also amended to provide that if the governor delegates that authority, the commission or the executive director, as the case may be, will carry out those responsibilities in accordance with the requirements prescribed in those sections.

In order to facilitate public involvement in the development of TIPs and the review of those programs, §15.7 is amended to require MPOs to submit electronic and printed copies of their TIPs to the department using the uniform format. Section 15.8 is amended to provide that the proposed and approved STIP and any amendments will be made available on the department's website. Section 15.7 is also amended to correct citations to federal law changed under TEA-21.

COMMENTS

The department held a public hearing on August 26, 2002. Two speakers provided comments. The department also received written comments from the Texas Metropolitan Planning Organizations (TEMPO), the Capitol Area Metropolitan Planning Organization (CAMPO), the Wichita Falls Metropolitan Planning Organization, and Mr. Jon Moller of the City of Wichita Falls.

Comment: A commenter stated that the association of Texas MPO's met and supported the changes that were offered. The commenter also suggested that references to the Texas Natural Resources Conservation Commission (TNRCC) should be updated to the current new name of the Texas Commission on Environmental Quality (TCEQ).

Response: The department agrees with this suggestion and §15.2(20) and §15.3(d)(3) and (4) have been changed to reflect the new name.

Comment: TEMPO also suggested that the entire Chapter 15 rules be revisited for a comprehensive review in the future that would track more closely federal regulations, and stated that the executive committee of TEMPO has already begun a comprehensive review on behalf of the MPOs and is working with the Transportation Planning and Programming Division of the department to share their comments and concerns.

Response: All of Chapter 15 is not open for revision at this time. However, the department looks forward to receiving TEMPO's comments.

Comment: TEMPO suggested that §15.3 be revised where it discusses metropolitan planning area boundaries. Specifically, "the discussion that the nonattainment area for ozone and carbon monoxide under the Clean Air Act" be revised to "be nonattainment by the EPA, just not for carbon monoxide or ozone, but also for particulate matter and other things." The commenter stated that this was a recommendation of the executive committee of TEMPO.

Response: The provision in §15.3 discussing nonattainment areas for ozone or carbon monoxide relates to existing nonattainment areas, that is, urbanized areas previously designated as nonattainment areas, and whether the nonattainment area boundaries and any future expansion of those boundaries must be included in the planning area boundaries. TEA-21 amended 23 USC §134(c) to authorize the retention of planning area boundaries in existence at the date of enactment of TEA-21 for those urbanized areas designated as nonattainment areas for ozone or carbon monoxide under the Clean Air Act. TEA-21 did not provide similar authority for urbanized areas designated as nonattainment for particulate matter or other pollutants. The requested change cannot be made.

Comment: A commenter suggested a change of the definition of "district" to "A geographic area managed by a district engineer, in which the department conducts its primary work activities." The commenter suggested this change because the number could either increase or decrease based on some future audit.

Response: The department disagrees with the comment. State law limits the number of districts to a maximum of 25. Considering the history of this issue, it is highly unlikely that the number will decrease.

Comment: A commenter stated that they would like the commission to encourage all MPO and rural jurisdictions to be just as proactive as the department, the commission, or the governor in posting MPO and rural TIPs on their respective websites.

Response: The department encourages the MPOs to follow their approved public involvement procedures and update them frequently to ensure a proactive public involvement. Also, the 2004-2006 STIP will be posted on the department's website when proposed and updated upon adoption.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

§15.2. Definitions.

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

(1) Clean Air Act Amendments of 1990 (CAAA)--Amendments to the Clean Air Act of 1970 (CAA) (42 U.S.C. §7401 et seq.), including procedures that apply to all transportation plans, programs, and projects as they relate to air quality.

(2) Commission--The Texas Transportation Commission.

(3) Conformity--Clean Air Act requirements that transportation plans and transportation improvement programs in nonattainment or maintenance areas meet the intent of the Texas State Implementation Plan (SIP) and the U.S. Environmental Protection Agency (EPA) conformity regulations contained in 40 C.F.R. Part 51. Emissions caused by transportation plans and programs in these areas must not exceed the level of motor vehicle emissions allowed in Texas' SIP and the EPA regulations.

(4) Corridor--A broad geographical band with no predefined size or scale that follows a general directional flow connecting major sources of trips. It involves a nominally linear transportation service area that may contain a number of streets, highways, and transit route alignments.

(5) Department--The Texas Department of Transportation.

(6) District--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(7) Environmental Protection Agency (EPA)--The federal agency primarily responsible for environmental protection, including air quality as it relates to this subchapter.

(8) Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(9) Federal discretionary program--Special set-aside funds to be included as line item discretionary projects designated by the United States Congress.

(10) Federal Highway Administration (FHWA)--The federal agency primarily responsible for highway transportation.

(11) Federal Transit Administration (FTA)--The federal agency primarily responsible for public mass transportation.

(12) Governor--The governor of the State of Texas or his or her designee.

(13) Major revision--An amendment to the Statewide Transportation Improvement Program involving a reallocation of funds between two or more districts or two or more metropolitan planning organizations or a metropolitan planning organization and a district.

(14) Metropolitan planning organization (MPO)--The forum for cooperative transportation decision making for the metropolitan planning area. The MPO is also the organization that is responsible for carrying out the transportation planning process for the metropolitan area.

(15) Metropolitan planning organization policy board--The forum and committee structure (e.g., Regional Transportation Council, Steering Committee, Policy Advisory Committee) established under Section 134 of Title 23, U.S. Code, Section 5303 of Title 49, U.S. Code, and the Governor's Designation Agreement as the group responsible for giving an MPO overall transportation policy guidance.

(16) Mobility projects--Transportation projects that add additional mainlanes to an existing facility and which have a length of at least one mile.

(17) Rural transportation improvement program--A staged, multiyear, intermodal program of transportation projects which is developed by the department, in consultation with local officials, for areas of the state outside of the metropolitan planning area boundaries. The rural TIP includes a financially constrained plan that demonstrates how the program can be implemented.

(18) Subarea--An area with no predefined size or scale that focuses on a non-linear part of a metropolitan area, such as an activity center or other geographic portion of a region.

(19) Surface Transportation Program (STP)--The block grant type program established by 23 U.S.C. §133.

(20) Texas Commission on Environmental Quality (TCEQ)--The state agency responsible for coordination of natural resources and air quality for the state, including development of the State Implementation Plan.

(21) Transportation control measure (TCM)--Any measure used for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

(22) Unified Planning Work Program (UPWP)--The governing planning document, prepared by an MPO on an annual basis, which identifies the transportation planning work to be undertaken within the metropolitan planning area.

§15.3. Organization, Structure, and Responsibilities of Metropolitan Planning Organizations.

(a) Purpose. Under 23 U.S.C. §134 and 49 U.S.C. §5303, as implemented by 23 C.F.R. Part 450, Subpart C, a metropolitan planning organization must be designated in each urbanized area, and each MPO must have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs which consider all transportation modes and support metropolitan community development and social goals. This section describes the process for designating MPOs, adding members to an MPO, setting metropolitan planning area boundaries, coordinating metropolitan planning among MPOs, transit operators, and the department, and prescribes the responsibilities of MPOs.

(b) Designations, redesignations, and membership of MPOs.

(1) Designations.

(A) A designation of an MPO shall be by agreement between the governor and local units of government representing 75% of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), and shall be carried out in accordance with 23 C.F.R. §450.306. More than one MPO may be designated within an urbanized area only if the governor determines that the size and complexity of the urbanized area makes designation of more than one MPO appropriate.

(B) Existing MPO designations remain valid until a new MPO is designated, unless revoked by the governor and local units of government representing 75% of the population in the area served by the existing MPO in accordance with 23 C.F.R. §450.306(f). The central city must be among those desiring to revoke the MPO designation.

(2) Redesignations.

(A) The designation of a new MPO to replace an existing MPO shall occur by agreement of the governor and affected local units of government representing 75% of the population in the entire metropolitan planning area. The central city(ies) must be among the units of local government agreeing to the redesignation.

(B) Redesignation of an MPO in a multistate metropolitan area requires the approval of the governor and the governor's counterpart in the other state, and of local officials representing 75% of the population in the entire metropolitan planning area. The local officials in the central city must be among those agreeing to the redesignation.

(C) Redesignation of an MPO covering more than one urbanized area requires the approval of the governor and local officials representing 75% of the population in the metropolitan planning area covered by the current MPO. The local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(D) If the governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally designated.

(3) Membership of MPOs. Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The governor and the MPO will review the previous MPO designation, state and local law, MPO bylaws, and any other relevant documentation to determine if this can be accomplished without a formal redesignation.

(c) Metropolitan planning area boundaries.

(1) Minimum area.

(A) General. Except as otherwise provided in subparagraph (B) of this paragraph, the metropolitan planning area boundary

shall, at a minimum, cover the existing urbanized area(s) and the contiguous geographic area likely to become urbanized within the 20 year forecast period covered by the transportation plan, and shall include the boundaries required by 23 C.F.R. §450.308. Metropolitan planning area boundaries shall be limited to the boundaries approved by the governor, and may include new nonattainment areas as agreed to by the governor and the MPO.

(B) Existing nonattainment areas. In the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan planning area in existence as of the date of enactment of the Transportation Equity Act for the 21st Century (TEA-21) shall be retained. Future expansion of nonattainment boundaries will be included within the boundaries of the metropolitan planning area to the extent agreed to by the governor and the MPO.

(2) Boundary establishment. The metropolitan planning area for a new urbanized area served by an existing or new MPO shall be established in accordance with this subsection. The current planning area boundaries for previously designated urbanized areas shall be reviewed and modified if necessary to comply with the criteria identified in this subsection.

(3) Coordination with other transportation modes. In addition to the criteria contained in this subsection, the planning areas currently in use for all transportation modes must be reviewed before establishing the metropolitan planning area boundary, and adjusted, if appropriate, in accordance with 23 C.F.R. §450.308.

(4) Approval of boundaries. Approval of metropolitan area boundaries by the FHWA or the FTA is not required. However, metropolitan planning area boundary maps must be provided to the department for further handling with the FHWA and the FTA, after their approval by the governor. Revisions to approved boundaries must also be approved by the governor. The governor and the department must be provided documentation and the rationale supporting any recommended boundary change.

(5) Use of suballocated Surface Transportation Program funds. If a portion of a nonattainment or maintenance area (as defined by the CAAA) is excluded from the metropolitan planning area boundary, the Surface Transportation Program funds suballocated to urbanized areas greater than 200,000 in population may not be used for projects outside the metropolitan planning area boundary.

(d) Metropolitan planning area agreements.

(1) Planning contract. The responsibilities for cooperatively carrying out transportation planning (including corridor and subarea studies) and programming shall be clearly identified in the planning contract between the department and the MPO.

(2) MPO-transit operator planning agreement. There shall be a written agreement between the MPO and operators of publicly owned transit services that specifies cooperative procedures for carrying out transportation planning (including corridor and subarea studies) and programming as required by this subchapter.

(3) Agreements in nonattainment MPOs. If the metropolitan planning area does not include the entire nonattainment or maintenance area (as defined by the CAAA), there shall be a written agreement among the department, TCEQ, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area. The agreement shall be in accordance with the requirements of 23 C.F.R. §450.310.

(4) Coordination of planning processes. If more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be a written agreement, consistent with the requirements of 23 C.F.R. §450.310, between the department and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area. In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include the TCEQ and any local air quality agencies.

(5) Existing agreements. For all requirements specified in paragraphs (1)-(4) of this subsection, existing agreements shall be reviewed for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

(e) Responsibilities of MPOs.

(1) General. The MPO in cooperation with the department and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process in accordance with 23 C.F.R. Part 450 and this subchapter. The MPO, the department, and transit operators shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement (e.g., feasibility and major investment) studies. They shall cooperatively develop the Unified Planning Work Program, metropolitan transportation plan, and transportation improvement program. In addition, the development of the metropolitan transportation plan and transportation improvement program shall be coordinated with other providers of transportation (e.g., sponsors of regional airports, maritime port operators, and rail freight operators).

(2) Metropolitan transportation plan. The MPO shall approve the metropolitan transportation plan and its periodic updates.

(3) Metropolitan transportation improvement program. The MPO and the governor shall approve the metropolitan transportation improvement program and any amendments. If the governor delegates this authority, the executive director shall approve the metropolitan transportation improvement program and any amendments found to be in accordance with §15.7(h) of this title (relating to Transportation Improvement Programs).

(4) Coordination with State Implementation Plan development. In nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the State Implementation Plan (SIP) development process, including the development of any transportation control measures (TCMs). The MPO shall develop or assist in developing the TCMs. The MPO shall not approve any metropolitan transportation plan or transportation improvement program which does not conform with the SIP, as determined in accordance with EPA conformity regulations.

(5) Metropolitan planning in areas with multiple MPOs. If more than one MPO has authority in a metropolitan planning area (including multistate metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs, the governor, and the governor's counterpart in any other involved state shall cooperatively establish the boundaries of the metropolitan planning area (including the 20 year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the states to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. While an individual MPO metropolitan transportation plan and transportation improvement program may be developed separately, each plan and transportation improvement program must be consistent with the plans and transportation improvement programs of other MPOs in the metropolitan planning area. For

the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis, and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of the Unified Planning Work Program and various planning products (e.g., the metropolitan transportation plan and transportation improvement program) to the department for further transmittal to the FHWA and the FTA.

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 November 1, 2002.

TRD-200207150
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 21, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-8630

CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §17.11

The Texas Department of Transportation (department) adopts new §17.11, concerning an electronic lien title (ELT) program. Section 17.11 is adopted without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6254) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

House Bill 1535, 77th Legislature, 2001, requires the department to develop and implement an ELT Program. An ELT Program will allow the department to exchange lien and title information with lienholders electronically.

Section 17.11(a) and (b) provide an explanation of the ELT Program, lienholder participation, and contracts that will enable the department to implement the system.

Section 17.11(c) addresses the title application process and electronic communication between the department and lienholders to confirm that liens have been accurately recorded. The confirmation of a lien by a lienholder will protect the integrity of title records.

Section 17.11(d) provides for the release of electronic liens and for the printing and mailing of paper titles. The release of lien and the printing of a new paper title will place the owner of a vehicle in the same position as under the current system.

Section 17.11(e) permits a lienholder with an electronic lien to obtain a paper title. This will allow a lienholder to obtain a new title after repossession, to deliver a paper title to the owner after a lien has been released, to reassign the lien to a new lienholder, or otherwise to place itself in the same position as a lienholder that has not participated in the ELT Program.

Section 17.22(f) allows for a lien to be assigned electronically at the request of a lienholder.

Section 17.22(g) provides that a certified copy of title will not be issued for a title record indicating an ELT remark. This will reduce the potential for the fraudulent use of certified copies of titles.

COMMENTS

Written comments were received from First Educators Credit Union, San Antonio Federal Credit Union, Omni American Credit Union, and Randolph Brooks Federal Credit Union. The comments did not indicate whether the commenters were in favor of or against the proposed new section.

Comment: Two commenters asked how name and address changes will be made. One of those commenters suggested that §17.11(c) be changed to add that before a lien is released, a participating lienholder must update the department's title record electronically to make changes to the owner of record's name, address, and lien date.

Response: Transportation Code, §501.117, only relates to perfecting, assigning, discharging, and canceling liens. Procedures for changing names, addresses, and lien dates are unchanged. Therefore, a name change or change in the lien date still requires the filing of an application for a corrected title with the county tax assessor-collector. A lienholder may notify the department informally of a change of address on a vehicle record, and the department will update the record.

Comment: One commenter asked about the cost to a lienholder under §17.11(d).

Response: Under §17.11(d), the department does not impose or assume any costs. Therefore, the lienholder will be responsible for its own costs in making any electronic notifications to the department, and the department will not charge a fee to remove a lien and print a clear title.

Comment: One commenter asked if the standard title application form will be amended to incorporate an ELT notation that can be checked by a lienholder or by a motor vehicle dealership.

Response: The department does not intend to amend its title application form to incorporate an ELT notation. The department will identify ELT participants through internal programming procedures.

Comment: One commenter asked how the state will communicate electronically with a financial institution and whether messages will be sent via email or over a private connection.

Response: The department intends to use the American Association of Motor Vehicle Administrators System Management, which incorporates the use of a mailbox to which messages are sent. The system is secure.

Comment: Two commenters asked who must submit payment when a lien is transferred electronically from one lienholder to another under §17.11(f).

Response: The provisions for filing an application for a corrected title, including the provisions for payment, are unchanged. Therefore, the transferee lienholder must include the usual $13.00 payment with the application for a corrected title transferring the lien.

Comment: One commenter asked how a lienholder will know if another institution is participating in the ELT Program.

Response: The department will list ELT participants on its website.

Comment: One commenter asked if each institution will be issued an identification number.

Response: Each participating institution will be individually and securely identified, but the department has not determined whether it will be through issuance of an identification number or through some other means.

Comment: Two commenters suggested that the program be designed to allow participants to turn in their current paper title portfolio and obtain ELT titles at a nominal cost.

Response: Section 17.11(e) provides for converting an ELT into a paper title, but the rule makes no provision for converting a pre-existing paper title into an ELT except by filing a new title application under §17.11(c). At this time, the department has not developed a workable procedure for the wholesale conversion of existing inventories of paper titles into ELTs, but this issue remains under consideration for possible future incorporation in the program.

Comment: One commenter suggested that a computer standard be developed for communications between the department and ELT participants. This commenter also suggested that third-party vendors be licensed or certified and be required to meet this standard.

Response: The department intends to use the American Association of Motor Vehicle Administrators System Management. Third-party vendors will need to meet the requirements of that system. The department does not have the authority to impose a licensing or certification requirement on third-party vendors.

Comment: One commenter noted that once a lien has been released by a program participant, the lien information will be removed from the title. This could be a problem if someone needs to contact that lienholder for information should the title be lost, etc. In those situations, it would help if the title showed the previous lienholder's name and address or if program participants could access that information through the department's computer.

Response: The name and address of a previous lienholder can be obtained through the department's title history records. Access to that information, however, is limited by the federal Driver's Privacy Protection Act and by the state Motor Vehicle Records Disclosure Act and cannot be made generally available.

Comment: One commenter suggested that the ELT Program needs to protect the lienholder/program participant so that a valid lien is not too easily removed from the title.

Response: The communication line between lienholders and the department will be secure. Moreover, the department will not release a lien unless it can confirm the source of the instruction to release the lien.

Comment: One commenter expressed the opinion that the transfer of an ELT lien from one lienholder to another will be of minimal benefit as in most cases a new title application must be filed to change owners, to drop or add a name, etc. In most cases the lienholder being paid off will just notify the State of Texas to issue a title without their lien and have it mailed to whoever paid off the lien.

Response: At this time, the department is unable to transfer a lien without the information contained on a title application. In addition, the department does not have the authority to waive the fee collected in connection with a title application filed when a lien is transferred. Nonetheless, the department will closely monitor implementation of the ELT Program and will continue to make improvements for the purpose of improving its efficiency and utility.

Comment: One commenter asked how vehicle repossessions will be handled.

Response: A lienholder may obtain a paper title at any time. From that point, the procedure for processing a repossession is unchanged.

Comment: Two commenters asked how the name of an ELT lienholder can be changed after a corporate merger.

Response: After a merger, acquisition, or other name change, the new lienholder can file a corrected title application to change the lienholder name and address.

Comment: One commenter asked if the title application form could be changed to create an optional field in which a financial institution could add an account and loan number?

Response: This request will be taken into consideration. Implementation would not require a change in the rule.

Comment: One commenter asked if a financial institution may be subject to a fine or penalty if it does not release a lien within 10 days of payoff.

Response: The department is not a law enforcement agency and therefore has no role in the enforcement process. This question should therefore be posed to a private attorney for legal advice.

Comment: One requestor asked how long it will take for someone to receive a paper title after the state has been notified electronically of the release of lien.

Response: When the department receives a timely electronic message from the lienholder to release a lien and print a clear paper title, the lien will be released and the title will be printed that night. It is not possible to predict the mail delivery time, but the department will attempt to implement procedures that will ensure that paper titles will be mailed within one day.

Comment: One commenter asked if fees will be charged in connection with the ELT Program, including licensing fees, filing fees, or fees for the release of liens.

Response: Applicable title fees will be collected as usual with title applications. The department will not charge a fee for the release of a lien.

Comment: One commenter asked how the ELT Program would operate if a private citizen wanted to purchase a vehicle from someone who had a lien through a financial institution. This commenter wanted to know if the buyer would need to get a power of attorney from the seller and wait for the title to be sent to the buyer in the mail.

Response: The ELT Program will not materially change the options that are available now in this situation. The only difference is that currently a lienholder may send a title directly to a recipient. Under the ELT Program, a lienholder has the option of requesting that the department send a clear title to a recipient.

Comment: One commenter asked if the department will issue a public announcement and instructions regarding electronic lien.

Response: The department will publish a public announcement or have a news release when the ELT Program is implemented.

STATUTORY AUTHORITY

The new section is adopted 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 department and more specifically under Transportation Code, §501.117, which authorizes the department to promulgate rules and procedures to govern the issuance of electronic lien titles.

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 November 1, 2002.

TRD-200207152
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 21, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-8630

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.49

The Texas Department of Transportation (department) adopts new §17.49, concerning registration of fleet vehicles with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7078).

EXPLANATION OF ADOPTED NEW SECTION

House Bills 1368 and 2124, 77th Legislature, 2001, require the department to develop and implement a system of registration so that an owner of a fleet of motor vehicles may consolidate the registration of the vehicles in that fleet as an alternative to the separate registration of each motor vehicle in the fleet. House Bills 1368 and 2124 provide that a system of consolidated registration must allow an owner to register an entire fleet of motor vehicles in the county of the owner's residence or principal place of business, or to register those vehicles in a fleet of vehicles that are headquartered in the same county by registering the vehicles in that county. House Bills 1368 and 2124 require the department to define a fleet and authorize the department to adopt rules to administer the consolidated registration system.

New §17.49 is added to define a fleet for purposes of fleet registration and to prescribe the policies and procedures that will be followed by the department in implementing fleet registration.

Section 17.49(a) establishes the scope of the section.

Section 17.49(b) sets minimum requirements for fleet registration. A fleet must consist of at least five vehicles registered in the name of a single person, and each vehicle must be titled or registered in Texas or an application for title or registration must be pending. These are minimal requirements necessary for efficient operation of the system.

Section 17.49(c) establishes the information that must be provided in an application for fleet registration. This information is comparable to that provided when vehicles are registered separately.

Section 17.49(d) sets a single, coordinated registration period for all vehicles in a fleet. This provision will ease the paperwork burden on registrants and on the department.

Section 17.49(e) sets standards for the handling of fleet registration insignia. In general, insignia will be handled in the same manner as current windshield stickers. The exception is that fleet registrants will be required to maintain copies of the registration receipt in each vehicle. Since fleet registration insignia may be issued on a multi-year basis, this provision is necessary so law enforcement personnel will be able to confirm that a vehicle's registration is current.

Section 17.49(f) sets the manner in which vehicles may be added to or removed from a fleet. These requirements are designed to maintain the efficiency of a single registration period for all fleet vehicles while minimizing the burden of processing paperwork.

Section 17.49(g) establishes the way in which the payment of fees will be coordinated when fleets are created and when vehicles are added or removed. Essentially, registrants will be credited for the unexpired portion of any current registration, and fees will be prorated when the new registration period for any vehicle is less than a year. As a result, there should be no net additional cost from excess or lost fees, either to the department or to the registrants. There will, however, be a net cost saving from a more efficient registration system for fleet vehicles.

COMMENTS

One comment was received from Ms. Karen Coffey, Chief Counsel for the Texas Automobile Dealers Association. The commenter recommended that the minimum number of vehicles in a fleet be reduced from 25 to five to be consistent with the definition of a "fleet transaction" in Tax Code, §23.121(a)(7).

Response: The department agrees with this comment. Accordingly, §17.49(b)(1) and (f)(3) are changed to set the minimum number of vehicles in a fleet to five. This is consistent with the definition of a "fleet transaction" as defined in Tax Code, §23.121(a)(7). It will also provide additional benefits to county tax assessor-collectors by allowing more efficient registration of fleets consisting of five to 24 vehicles.

STATUTORY AUTHORITY

The new section is adopted 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 department, and more specifically, Transportation Code, §502.0022, which requires the department by rule to define fleet for purposes of this section and authorizes the department to adopt rules to administer this section.

§17.49. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than five vehicles will be registered as a fleet.

(2) All vehicles in a fleet must be registered to the same person.

(3) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a certificate of title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be on a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, including the motor vehicle's model year, make, model, vehicle identification number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a copy of the lease agreement verifying that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.153, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(d) Registration period.

(1) The department will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be attached to the windshield of each vehicle as specified by Transportation Code, §502.180, if the vehicle has a windshield.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet.

(3) If the number of vehicles in a fleet falls below five during the registration period, fleet registration will remain in effect. If the number of vehicles in a fleet is below five at the end of the registration period, fleet registration may be canceled. In considering cancellation, the department will consider the number of remaining vehicles in the fleet, how long fleet registration has been in effect, and representations made by the registrant. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for 12 months. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining. If the credit exceeds the prorated fleet registration fee, the registrant will receive the net credit for use at the time of registration renewal.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

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 November 1, 2002.

TRD-200207154
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 21, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-8630

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Groundwater Protection Committee

Title 31, Part 18

TRD-200207230
Filed: November 6, 2002

Proposed Rule Review

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Title 16, Part 8, Texas Administrative Code, Chapter 319, relating to Veterinary Practices and Drug Testing. This review and consideration is in accordance with Government Code, §2001.39.

As part of this review process, the Commission is proposing new §319.16, amendments to §§319.6, 319.102, 319.202, 319.303, 319.332-319.334, and 319.338, and the repeal of §309.108. The proposed new section, amendments, and repeal are published elsewhere in this issue of the *Texas Register*.

The Commission is proposing the readoption of the following sections without amendment: §§319.1-319.5, 319.7-319.15, 319.101, 319.104-112, 319.201, 319.203-204, 319.301-319.302, 319.304, 319.331, 319.335-319.337, 319.361-319.362, and 319.391.

The Commission will accept comments on the requirement as to whether the reasons for adopting these sections continue to exist as well as comments on the proposed new section, amendments, and repeal published in this issue of the *Texas Register* .

All comments or questions regarding this notice of intent to review should be directed to Paula C. Flowerday, Executive Secretary, Texas Racing Commission, P.O. 12080, Austin, Texas 78711-2080, telephone 512-833-6699, FAX 512-833-6907.

TRD-200207121
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Filed: October 30, 2002

Adopted Rule Review

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind has completed its review of all rules in Chapter 173 of the Texas Administrative Code, pertaining to Donations, in accordance with Texas Government Code, §2001.039.

The Board received no public comments in response to its notice of the rule review filed September 15, 2000, issue of the Texas Register, in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8783). The public was invited to make comments on the rules as they exist in Title 40 TAC, Part 4, Chapter 173.

The Commission finds that the reasons for adopting all rules in the chapter continue to exist and they are hereby readopted without changes.

TRD-200207242
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: November 6, 2002

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction Deadline
1	after February 1	September 1
2 - Area 1	No dates set	**November 14** [~~September 1~~]
2- Area 2	No dates set	**November 14** [~~September 1~~]
2- Area 3	No dates set	**November 14** [~~September 1~~]
2 - Area 4	No dates set	**November 14** [~~October 1~~]
3- Area 1	After February 1	**November 14** [~~October 1~~]
3- Area 2	After February 1	**November 14** [~~October 15~~]
4	No dates set	**November 14** [~~October 10~~]
5	No dates set	**November 14** [~~October 20~~]
6	No dates set	**November 28** [~~October 31~~]
7	after February 1	November 30
8 - Area 1	after February 1	October 31
8 - Area 2	after February 1	November 30
9	No dates set	No date set
10	No dates set	February 1

Figure: 16 TAC §37.60(a)

HEALTH, SAFETY AND WELFARE VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7	10-12	30-Cancel
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	7-15	10-90 Per §106.13	60-Cancel
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	7-20	10-90 Per §106.13	60-Cancel
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11, Alcoholic Beverage Code.	10-15	15-20	30-Cancel
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	45-Cancel	60-Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §§11.61(b)(21), 61.71(a)(31).	Warning-5	7-10	25-Cancel
Possession of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	21-Cancel	45-Cancel	Cancel
Possession of narcotics by an employee or agent of a licensee or	10-21	21-45	45-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.			
The sale or delivery or permitting the sale or delivery of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code and Title 16, §35.41(27), Texas Administrative Code.	Cancel		
The sale or delivery or permitting the sale or delivery of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code or Title 16, §35.41(27), Texas Administrative Code.	30-Cancel	60-Cancel	Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the license or permit holder in violation of §104.01, Alcoholic Beverage Code.	15-20	25-30	30-Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the employee of any license or permit holder in violation of §104.01, Alcoholic Beverage Code.	10-15	20-25	30-Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	10-15	15-30	30-Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	10-15	15-30	30-Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in	10	15-20	30-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
violation of §104.01(2), Alcoholic Beverage Code.			
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	Warning-3	5-7	15-Cancel
Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §61.71(a)(18) or §105.06, Alcoholic Beverage Code.	5	7-10	25-Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	7	20-30	60-Cancel
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses. Examples (not limited to the following offenses): Possession of any gambling paraphernalia or device; Gambling on a licensed premises; Keeping a gambling place; Bribery; Prostitution; Promotion of prostitution; Employment harmful to a minor; Obscenity; Misuse of food stamps.	15-Cancel		
Violation of city codes (relating to health, safety and welfare).	Warning-10	15-25	30-Cancel

MAJOR REGULATORY VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	10 Employee 20 Permittee	10-15 25-30	45-Cancel 45-Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5	7-10	25-Cancel
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code.	5	7-10	25-Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3	5-10	10-25
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 5-10	Original suspension plus 25-Cancel	Cancel
Subterfuge - Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	Warning-10	10-15	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	Warning-5	15-20	30-Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	10 Employee 15 Permittee	15-20	30-Cancel
Knowingly possess uninvoiced	Cancel	Cancel	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.			
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	10	15-45	60-Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-25 Employee 25-30 Permittee/ Licensee
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-30 Employee 20-30 Permittee/ Licensee
Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, Alcoholic Beverage Code.	3	7-10	15-30
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	3	7-10	15-30
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	5	10-15	15-30
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5	10-15	15-30
Selling an alcoholic beverage away from a licensed premises.	7	10-15	15-45
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	5	10-15	20-30
Making false or misleading statements	Cancel		

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.			
Sale or delivery of alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code.	3	10-15	25-30
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	Warning-5	10-15	25-30
Improper record keeping in violation of agency rules §§41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	Warning-3	3-5	5-7
Knowingly filed false report or record.	Cancel		
Knowingly failed to keep record or file return in manner required.	5-10	20-30	35-Cancel
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	Warning-3	3	5-10
Failed to present program curriculum as approved. §50.4(g).	Warning-3	5-7	15-Cancel
Program taught in ineffective manner. §50.4.	Warning-3	5-7	15-Cancel
Failed to use certified trainer. §50.6(a).	10-15	21-Cancel	Cancel
Had more than 50 trainees in a session. §50.4(e).	Warning-3	5-10	21-30

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a).	Warning-3	5-7	10-20
Failure to properly test. §50.4(j)-(n).	Warning-3	5-10	Cancel
Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2).	15-30	30-Cancel	
Licensee/Permittee programs certifying non-employees. §50.4(d).	Warning-3	5-7	10-20
Failed to distribute certificates to trainees. §50.4(r).	Warning-3	5-10	21-30
Trainer taught in a language that was not authorized. §50.6(a).	Warning -3	5-10	21-30
Violation of requirements for school/program approval. §50.3(a)-(h).	Cancel		
Violated a provision of Section 50.5(b) (Program). §50.5(b).	Cancel		
Violated a provision of Section 50.7 (Trainer). §50.7.	Cancel		
Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2).	7-14	21-30	Cancel
Failure to timely file or properly prepare the report of seller training. §50.5(b)(4).	3-5	7-10	Cancel
Failure to properly prepare and issue certificates. §50.4(r).	Warning-3	5-10	Cancel

Figure: 28 TAC §3.7006(a)(1)(A)(ii)(I)

Duration	Adjustment Factor	Adjusted Termination Rates*
Week 1	0.366	0.04831
2	0.366	0.04172
3	0.366	0.04063
4	0.366	0.04355
5	0.365	0.04088
6	0.365	0.04271
7	0.365	0.04380
8	0.365	0.04344
9	0.370	0.04292
10	0.370	0.04107
11	0.370	0.03848
12	0.370	0.03478
13	0.370	0.03034
Month 4	0.391	0.08758
5	0.371	0.07346
6	0.435	0.07531
7	0.500	0.07245
8	0.564	0.06655
9	0.613	0.05520
10	0.663	0.04705
11	0.712	0.04486
12	0.756	0.04309
13	0.800	0.04080
14	0.844	0.03882
15	0.888	0.03730
16	0.932	0.03448
17	0.976	0.03026
18	1.020	0.02856
19	1.049	0.02518
20	1.078	0.02264
21	1.107	0.02104
22	1.136	0.01932
23	1.165	0.01865
24	1.195	0.01792
Year 3	1.369	0.16839
4	1.204	0.10114
5	1.199	0.07434
6 and later	1.000	**

*The adjusted termination rates derived from the application of the adjustment factors to the DTS Valuation Table termination rates shown in exhibits 3a, 3b, 3c, 4, and 5 (*Transactions of the Society of Actuaries* (TSA) XXXVII, pp. 457-463) is displayed. The adjustment factors for age, elimination period, class, sex, and cause displayed in exhibits 3a, 3b, 3c, and 4 should be applied to the adjusted termination rates shown in this table.

** Applicable DTS Valuation Table duration rate from exhibits 3c and 4 (TSA XXXVII, pp. 462-463.

The 85CIDA table so adjusted for the computation of claim reserves shall be known as 85 CIDC (The Commissioners Individual Disability Table C).

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Alcoholic Beverage Commission

Request for Applications (RFA) - Enforcing the Underage Drinking Laws

The Texas Alcoholic Beverage Commission (TABC) is soliciting applications for projects that improve or promote the enforcement of underage drinking laws. TABC is able to award funding to state agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities through the Department of Justice's Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Enforcing the Underage Drinking Laws (EUDL) Program.

Program Announcement

Underage drinking is a serious problem that requires continuous attention from the prevention, education, and enforcement fields. While the State of Texas currently allocates resources to address underage drinking, more needs to be done. The Texas Alcoholic Beverage Commission (TABC)'s primary goal for participating in the Enforcing the Underage Drinking Laws (EUDL) Program is to increase the State's ability to enforce the underage drinking laws and to prevent youth access to and illegal use of alcohol. Through this competitive RFA, applicants may request funds for a variety of projects that help to meet this goal. While this program may fund any underage drinking education, enforcement, prevention, or prosecution initiative, TABC would like to fund projects that fall under one of the following two focus areas:

Focus Area #1: General Enforcement and Prosecution Projects (Application Code 81000)

Applicants applying for funds allocated to Focus Area #1 should submit

applications describing enforcement and/or prosecution-based projects meeting one or more of the following criteria:

• Addresses underage drinking issues in rural areas,

• Addresses the availability of alcohol to minors through a variety of sources,

• Involves multiple aspects of the community,

• Involves youth in planning and carrying out program activities. Preference will be given to applicant programs that are currently operating, but could expand efforts with additional funds.

Focus Area # 2: College and University Campus-Community Projects (Application Code 82900)

Applicants applying for funds allocated to Focus Area #2 should submit applications that address the enforcement of underage drinking laws and related environmental issues on and around college campuses. Applicant projects must describe how the community and college/university will work together to address underage drinking problems. While applicants must focus on college and university underage drinking issues, all eligible applicants may apply for funding in this focus area.

General Requirements

Applications must present a documented underage drinking problem and detail a *comprehensive* approach to addressing the problem. This approach should involving many education, enforcement, prevention, and prosecution-based strategies, and many key community players. Applicants must explain why additional resources are needed and how grant funds will be used to contribute to the implementation of the approach. Applicants are encouraged to pursue initiatives that involve environmental approaches. Environmental approaches include efforts that: seek to change policy; target enforcement efforts to identified problems; change the general attitudes of the public and retailers about underage drinking; and/or address retailer practices encouraging underage drinking-to name a few.

Coordination

Grant applications must describe how the project will be coordinated with existing programs and policies, with particular attention to documenting that grant funds will be used to *create* new projects or *expand* existing ones. Preference will be given to projects that outline a plan to continue efforts should future year funding not be available.

Evaluation

Grant applications must include measurable goals with baseline data (data for the year before the grant). Actual results for each goal will be compared with baseline data. Grantees must report quarterly to the TABC on progress report forms provided by the agency.

Eligible Applicants

State agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities are eligible to apply for the TABC grants under the EUDL fund. Applicants may provide services directly or under contract with other cities, counties, school districts, private companies, or non-profit organizations. Colleges and universities that apply must address how they will coordinate project efforts with the surrounding community.

Amount of Each Grant

Average grant awards will range from $10,000 to $100,000 per year. In selecting applications for grant awards, the TABC will try to balance funding throughout the state and between focus areas-subject to the quality of applications received, the demonstrated problem and necessity of additional resources, and the results of competitive scoring. FUNDS WILL BE AVAILABLE ON A REIMBURSEMENT BASIS ONLY.

Grant Period

Grant-funded projects must begin on April 1, 2003. Grants shall be awarded for a project period of twelve months, from April 1, 2003 through March 31, 2004. Although a project extension may be requested, grantees should not anticipate an extension in their project plan.

Matching Funds Funded applicants must provide a 25 percent project "match" either by cash contribution or the value equivalent of in-kind contributions.

Non-Supplanting Requirement

Federal funds shall not be used to supplant state or local funds and shall only be used to start new initiatives or expand existing programs.

Construction Costs

Land acquisition and construction costs are ineligible.

Equipment Purchases

Equipment purchases are ineligible. Equipment rental may be approved.

Continuation Funding Policy

Grants will be awarded for a period of one year. Applicants may apply for continuation funding in subsequent years, subject to the availability of federal funds.

Reports

Grantees must submit quarterly progress reports and financial expenditure reports. TABC will supply the necessary forms and instructions following grant awards. Failure to submit reports on time will result in a financial hold on grant funds until the reports are submitted. *Grants may be terminated if guidelines are not met.*

Deadline for Submission

Original applications and two copies must be received at the TABC no later than 5:00 P.M. by Tuesday, February 4, 2003.

Texas Review and Comment System

A copy of each grant application must be submitted to the appropriate Regional Council of Governments (COG) or to the State Single Point of Contact (SPOC) for TRACS review. The applicant is responsible for this submission and for submitting a copy of the TRACS review letter to TABC.

Selection Process

Applications will be scored competitively, using the scoring instrument included in the application kit. All funding decisions related to these grants are fully within the discretion of the TABC Administrator or his designee. TABC informs the applicant of this decision through either an award or denial letter. Applicants must not make any assumptions regarding funding decisions until they have received official written notification of award or denial that is signed by either the TABC Administrator or the Grant Programs Administrator. Funding will be awarded by March 14, 2003. All applicants should plan to attend a grant delivery meeting tentatively scheduled for Wednesday, March 19, 2003 at TABC Headquarters in Austin.

Program Authorization

This block grant funding is authorized under the Enforcing the Underage Drinking Laws Program, authorized by the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105-277, FY 2001 Appropriations Act, Public Law 106-553.

Applicant Training

Applicant information/training and project development sessions will be scheduled. Visit the TABC website at www.tabc.state.tx.us for more information on the dates and locations of these sessions.

For Further Information

If you have any questions, contact the Programs Administrator, TABC, at 512/ 206-3430 or e-mail your information request to grants@tabc.state.tx.us

TRD-200207193
Rolando Garza
Administrator
Texas Alcoholic Beverage Commission
Filed: November 4, 2002

♦ ♦ ♦

Andrews County

Public Notice

The Commissioners' Court of Andrews County, Texas, in accordance with Human Resources Code §32.0244 and regulations set forth by the Texas Department of Human Services, hereby gives notice of its intent to seek additional Medicaid-certified nursing home beds in Andrews County.

The Commissioners' Court is seeking the following:

(1) comments on whether a new Medicaid nursing facility should be requested; and,

(2) proposals from persons or entities interested in providing additional Medicaid-certified beds in Andrews County, including persons or entities currently operating Medicaid-certified facilities.

All comments and proposals should be submitted in writing to, and should be received *no later than 9:00 a.m. on Monday, November 18, 2002:*

Richard H. Dolgener, County Judge

County of Andrews

Room 104, Courthouse

Andrews, Texas 79714

Phone (915) 524-1401

Fax (915) 524-1470

Email: rdolgener@co.andrews.tx.us

TRD-200207248
Richard H. Dolgener
County Judge
Andrews County
Filed: November 6, 2002

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

Notice of Award: Pursuant to Chapters 403, Sections 403.011, 403,105, 403.1041 and 403.1069; and Chapter 404, Subchapter G, Sections 404.103, 404.104 and 404.104(c); and Chapter 2254, Subchapter A and Chapter 2256; and Chapter 791, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company, announces this notice in connection with Comptroller's Request for Proposals (RFP #145b) for professional certified public accounting services to perform separate financial audits of the Texas Local Government Investment Pool and the Texas Tobacco Settlement Permanent Trust for the Trust Company.

The notice of request for proposals (RFP #145b) was published in the August 9, 2002, issue of the *Texas Register* at 27 TexReg 7242.

A contract was awarded to KPMG LLP, 111 Congress Avenue, Austin, Texas 78701. The total amount is not to exceed $50,000.00. The term of the contract is October 22, 2002 through November 30, 2003.

TRD-200207215
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 5, 2002

Notice of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, and Sections 403.011 and 403.020 Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #146a) was published in the September 6, 2002, issue of the *Texas Register* at 27 TexReg 8654.

The consultant will assist Comptroller in conducting a management and performance review of the Rockwall Independent School District.

The contract was awarded to WCL Enterprises, P. O. Box 941328, Houston, Texas 77094. The total amount of this contract is not to exceed $134,980.00.

The term of the contract is October 23, 2002 through May 31, 2003. The final report is due on or before April 4, 2003.

TRD-200207216
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 5, 2002

Notice of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, and Sections 403.011 and 403.020 Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #147a) was published in the September 13, 2002, issue of the *Texas Register* at 27 TexReg 8797.

The consultant will assist Comptroller in conducting a management and performance review of the Rosebud-Lott Independent School District.

The contract was awarded to Capital Linkages, Inc., 105 West Riverside Drive, Suite 203, Austin, Texas 79704. The total amount of this contract is not to exceed $67,042.00.

The term of the contract is October 23, 2002 through May 31, 2003. The final report is due on or before March 26, 2003.

TRD-200207217
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 5, 2002

Notice of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, and Sections 403.011 and 403.020 Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #148a) was published in the September 20, 2002, issue of the *Texas Register* at 27 TexReg 8977.

The consultant will assist Comptroller in conducting a management and performance review of the Marlin Independent School District.

The contract was awarded to Government Resource Associates LLC, 2630 West Freeway, Suite 210, Fort Worth 76102. The total amount of this contract is not to exceed $79,900.00.

The term of the contract is October 24, 2002 through May 31, 2003. The final report is due on or before March 19, 2003.

TRD-200207218
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 5, 2002

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, and Section 130.084, Education Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #149a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Alamo Community College District (District). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of District under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about January 3, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, November 15, 2002, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 2 p.m. (CZT) on Friday, November 15, 2002.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Monday, December 2, 2002. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than December 4, 2002, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., December 2nd deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, December 11, 2002. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit Mandatory Letters of Intent by the December 2, 2002, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - November 15, 2002, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - December 2, 2002, 2 p.m. CZT; Official Responses to Questions Posted - December 4, 2002, or as soon thereafter as practical; Proposals Due - December 11, 2002, 2 p.m. CZT; Contract Execution - December 20, 2002, or as soon thereafter as practical; Commencement of Project Activities - January 3, 2003.

TRD-200207234
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 6, 2002

Texas Treasury Safekeeping Trust Company Plan of Operation

Plan of Operation: Pursuant to Chapter 404, Subchapter G, §404.103(g), Texas Government Code, the Texas Treasury Safekeeping Trust Company (Trust Company) has developed and adopted a Plan of Operation for the purchase of certain goods and services using best value methods. Pursuant to §404.103(g), the Trust Company shall make all purchases of goods and services using purchasing methods that ensure the best value to the Trust Company and its participants.

Copies: On November 15, 2002, the Trust Company (agency 930) made the complete Plan of Operation available electronically on the Texas Marketplace: http://esbd.tbpc.state.tx.us/1380/sagency.cfm. Hard copies of the Plan of Operation may also be requested from the contact named in the paragraph below.

Questions: Questions concerning the adopted Plan of Operation may be submitted via facsimile or e-mail to Pamela Ponder, Deputy General Counsel for Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774; facsimile: (512) 475-0973; e-mail: pamela.ponder@cpa.state.tx.us. On December 19, 2002 or as soon thereafter as practical, the Trust Company shall post on the Texas Marketplace answers to written questions concerning the Plan of Operation that are received via such facsimile or e-mail before 5:00pm, CZT, December 17, 2002.

TRD-200207235
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 6, 2002

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/11/02 -- 11/17/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 11/11/02 -- 11/17/02 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200207199
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 5, 2002

Deep East Texas Council of Governments

Request for Proposals

REGIONAL HOUSING AUTHORITY

Section 8 Housing Choice Voucher (HCV)

Reasonable Rent Determination Comparability Study and System

The DETCOG Regional Housing Authority will accept competitive sealed proposals for a consulting firm to conduct a Section 8 Housing Choice Voucher Reasonable Rent Determination Comparability Study and establish a system to perform reasonable rent determinations for its Section 8 HCV Program. The study and system must fully comply with 24 CFR Part 982.507, Rent to Owner, 24 CFR Part 985.3, SEMAP Reasonable Rent Determination and related HUD requirements.

All applicants must be familiar with Housing and Urban Development's regulations. Deadline to submit one proposal and credentials is 4:30 p.m. on Tuesday, November 12, 2002 at the address listed below. RFP's can be obtained Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m. at 274 East Lamar Street; Jasper, Texas. All proposals should be sent to:

Ethel Bluitt, Director of Housing

Deep East Texas Regional Housing Authority

274 East Lamar Street

Jasper, Texas 75951

For more information, contact Ethel Bluitt at (409) 384-5704. The DETRHA reserves the right to reject any or all proposals. The DETRHA is an equal opportunity employer.

TRD-200207139
Walter G. Diggles
Executive Director
Deep East Texas Council of Governments
Filed: October 31, 2002

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding KENNEDY RIDGE WATER SUPPLY CORPORATION, Docket No. 2000-1069-PWS-E on October 25, 2002 assessing $9,888 in administrative penalties with $9,288 deferred.

Information concerning any aspect of this order may be obtained by contacting ELISA ROBERTS, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RUDOLFO DE LA ROSA DBA DEL CAMINO CLEANERS AND MARTIN CABALLERO DBA DLE CAMINO CLEANERS, Docket No. 2000- 1024-PST-E on October 25, 2002 assessing $10,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LISA LEMANCYZK, Staff Attorney at (512) 239-6793, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BILLY RAY FISHER, Docket No. 2000-0865-OSI-E on October 25, 2002 assessing $2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817) 588-5878, Enforcement Coordinator at , Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MITCHELL AND ALVIN KIDD DBA OLD WEST MOBILE, Docket No. 2001-1193-PWS-E on October 25, 2002 assessing $9,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHANNON STRONG, Staff Attorney at (512) 239-6201, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOX CONTRACTORS, INCORPORATED, Docket No. 2002-0041-PST-E on October 25, 2002 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting JUDY FOX, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRUY PETROLEUM MANAGEMENT CO., Docket No. 2002-0119-AIR-E on October 25, 2002 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, Staff Attorney at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K & K CONSTRUCTION, INC., Docket No. 2002- 0261-AIR-E on October 25, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TRINA GRIECO, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAPALUA FUEL & MARINE SERVICES, INC., Docket No. 2002-0136-PST-E on October 25, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512) 239-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KING FUELS, INC., Docket No. 2002-0256-PST-E on October 25, 2002 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting TRINA GRIECO, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LINDA GONZALEZ DBA MANNY'S GROCERY, Docket No. 2001-1536-PST-E on October 25, 2002 assessing $23,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANTI OPERATING COMPANY, Docket No. 2002- 0545-AIR-E on October 25, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting DAN LANDENBERGER, Enforcement Coordinator at (915) 570-1359, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATIONSRENT OF TEXAS LP, Docket No. 2002- 0095-AIR-E on October 25, 2002 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUZANNE WALRATH, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AIR PRODUCTS LP, Docket No. 2002-0218-AIR-E on October 25, 2002 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA JOHNSON, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAMOCO, INCORPORATED, Docket No. 2001- 1414-PST-E on October 25, 2002 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA PETROCHEMICALS LIMITED PARTNERSHIP, Docket No. 2002-0029-AIR-E on October 28, 2002 assessing $12,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. CORRY FRANK DBA CHANCES NIGHT CLUB, Docket No. 2001-1477-PWS-E on October 25, 2002 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting JOHN SCHILDWACHTER, Enforcement Coordinator at (512) 239-2355, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EARL SCHEIB OF TEXAS, INC. DBA EARL SCHEIB PAINT AND BODY, Docket No. 2002-0322-IHW-E on October 25, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA CLAUSEWITZ, Enforcement Coordinator at

(210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EQUISTAR CHEMICALS LP, Docket No. 2001-1516- AIR-E on October 25, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting TRINA GRIECO, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PENNINGTON COMPANY, INC., Docket No. 2002- 0552-PST-E on October 25, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL MEYER, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NIMRA FOOD MART, INC., Docket No. 2002-0013- PST-E on October 25, 2002 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CLAUSEWITZ, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ORE CITY, Docket No. 2002-0023-MWD-E on October 25, 2002 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL LIMOS, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PRAIRIE VIEW, Docket No. 2001-0152- PWS-E on October 25, 2002 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REPUBLIC WASTE SERVICES OF TEXAS, LTD. DBA ARLINGTON DISPOSAL, Docket No. 2002-0392-PST-E on October 25, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAVE ONE STOP, INC., Docket No. 2001-1572-PST-E on October 25, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF SEADRIFT, Docket No. 2001-0832-MWD-E on October 25, 2002 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAWN & SHAWN, INC. DBA T & J CONOCO, Docket No. 2002-0366-PST-E on October 25, 2002 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JUDY FOX, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIERRA MICROWAVE TECHNOLOGY, INCORPORATED, Docket No. 2002-0627-EAQ-E on October 25, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512) 339-2929, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NUECES COUNTY HOSPITAL DISTRICT DBA SOUTHSIDE HEALTH CENTER, Docket No. 2002-0267-PST-E on October 25, 2002 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512) 239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAYEO INC DBA TEXACO AT PARKER & JUPITER, Docket No. 2002-0036-PST-E on October 25, 2002 assessing $1500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting ALAYNE FURGUSON, Enforcement Coordinator at (817) 588-5812, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-CON, INC., Docket No. 2002-0050-PST-E on October 25, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRUMAN ARNOLD COMPANIES, Docket No. 2002- 0342-PST-E on October 25, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting JUDY FOX, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding YOUR C STORE, INC., Docket No. 2002-0139-PST-E on October 25, 2002 assessing $14,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SARAH SLOCUM, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROY CARRELL DBA ROY CARRELL DAIRY, Docket No. 2001-0664-AGR-E on October 25, 2002 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GITANJALI YADAV, Staff Attorney at (512) 239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIMAC CORPORATION, Docket No. 2001-1490- PST-E on October 25, 2002 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LORENZO ESTRADA DBA RELIABLE BACKHOE, Docket No. 2001-1224-OSI-E on October 25, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting TROY NELSON, Staff Attorney at (903) 525-0380, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200207225
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2002

Notice of District Petition

Notices mailed October 28, 2002.

TCEQ Internal Control No. 07122002-D08; Cash Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Cash Water Supply Corporation to Cash Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 10824 from Cash Water Supply Corporation to Cash Special Utility District. Cash Special Utility District's business address will be P.O. Box 8129, 198 FM 1564 East, Greenville, Texas 75404. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The proposed District is located in Hunt, Hopkins, Rains, and Rockwall Counties and will contain approximately 241 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10824. CCN No. 10824 will be transferred after a positive confirmation election. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07122002-D07; Coleman County Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Coleman County Water Supply Corporation to Coleman County Special Utility District and to transfer Certificate of Convenience and Necessity (CCN) No. 11308 from Coleman County Water Supply Corporation to Coleman County Special Utility District. Coleman County Special Utility District's business address will be 214 Santa Anna Avenue, Coleman, Texas 76843-0000. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Brown, Callahan, Coleman, Runnels, and Taylor Counties and will contain approximately 1,575 square miles. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 11308. CCN No. 11308 will be transferred after a positive confirmation election. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200207224
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2002

Notice of Water Rights Application

Notices mailed October 30, through October 31, 2002.

APPLICATION NO. 5767; Herman Stroud, et ux, P. O. Box 185, Dennis, Texas, 76439, have applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.121 Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicants seek authorization to divert and use not to exceed 99 acre-feet of water per year at a maximum diversion rate of 1.34 cfs (600 gpm) for storage in two exempt off- channel reservoirs with a combined storage capacity of approximately 32.5 acre-feet for subsequent irrigation of 50 acres of land out of a 129.75 acre-tract in the Samuel Riddle 1858 acre survey Pat. No. 345, Vol. 8 Abstract No. 1129, Parker County, Texas. The diversion point is located at a point

on the north bank of the Brazos River, Brazos River Basin, at Latitude 32.624 N, Longitude 97.934 W, bearing N 60 degrees E, 218.31 feet from the southeast corner of the aforesaid Riddle Survey. Ownership of the land to be irrigated is evidenced by a deed recorded in Vol. 634, Page 617 of the Parker County Deed Records. The application was received on February 15, 2002 and accepted for filing on March 29, 2002. The Executive Director of the TCEQ has reviewed the application and has declared it to be administratively complete on March 29, 2002. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5789; The Lakeside Club, P.O. Box 40173, Houston, Texas 77240, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 153 acre-feet of water per annum from the White Oak Bayou (aka North Branch of White Oak Bayou), tributary of Buffalo Bayou, the San Jacinto River Basin in Harris County for storage in an off-channel reservoir known as Jersey Village Lake for in-place recreational purposes at a maximum diversion rate of 0.45 cfs (200 gpm). Jersey Village Lake has a capacity of 108 acre-feet with a surface area of 27 acres and is located at 29.889 N Latitude, 95.558 W Longitude. Also bearing S 69 degrees W, 3,336 feet from northeast corner of J. M. Dement Survey, Abstract No. 228, Harris County, Texas. The diversion point is located at approximately 18 miles northwest direction from Houston on White Oak Bayou. Ownership of the land where the proposed diversion point and existing off-channel reservoir are evidenced by a Warranty Deed as recorded in Vol. 5188, Page 326 of the official records of Harris County. The application was received on July 19, 2002 and additional information and fees were received on September 6, 2002. The application was accepted for filing and declared administratively complete on October 9, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12-3653A; Larry Wayne Adams, applicant, seeks to combine water rights and to amend Certificate of Adjudication No. 12-3653, as combined, pursuant to Texas Water Code (TWC)11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. The applicant owns Certificate of Adjudication No. 12-3653, which authorizes the owner to divert and use not to exceed 12 acre-feet of water per annum from a point on the Leon River, a tributary of the Little River, a tributary of the Brazos River, Brazos River Basin at a maximum diversion rate of 0.371 cfs (320 gpm) for agricultural purposes to irrigate 35 acres of land out a 114.1-acre tract located in the Joseph P. Berger Survey, Abstract 62, Comanche County, Texas. Applicant's ownership of the acreage is evidenced by a Warranty Deed recorded in Volume 669, page 86 of the Deed Records of Comanche County. The time priority of the owner's right is August 31, 1963. Applicant owns a portion of Certificate of Adjudication No. 12-2814 that authorizes the diversion and use of not to exceed 581.40 acre-feet of water per annum from the Leon River at a maximum diversion rate of 1,795 gpm (4.0 cfs) for agricultural purposes for irrigation use. No land is associated with this right. The certificate includes a time priority of December 31, 1953. The applicant also owns Certificate of Adjudication No. 12-2817, which authorizes the owner to divert and use not to exceed 258 acre-feet of water per annum from the Leon River at a maximum diversion rate of 3.13 cfs (1,400 gpm). No land or use is associated with this right. The time priority of the owner's right is January 31, 1965. Pursuant to documents dated February 22, 2000 and March 20, 2001, Grace Olena Adams granted the applicant permission to use his water rights on any land owned by her that he operates in the future. Applicant seeks to sever the Leon River portion of the water rights he owns authorized by Certificate of Adjudication No. 12-2817 and all of his rights authorized by Certificate of Adjudication No. 12-2814 and combine these rights with Certificate of Adjudication No. 12-3653 and to amend Certificate of Adjudication No. 12-3653, as combined, to add the place of use of the water authorized as follows: 1. On the land included in Certificate of Adjudication No. 12-3653; 2. On the land owned by Grace Olena Adams (238.75-acre portion of a 335.70-acre tract located in the A. McCaleb Survey, Abstract 664) previously included in Certificate of Adjudication No. 12-2817 (the water right will not be appurtenant to this land); 3. On the land owned by the Estate of Wayne Adams (137-acre portion of a 167.50-acre tract of land in the Archibald Smothers Survey, Abstract 836) previously included in Certificate of Adjudication No. 12-2814 (the water right will not be appurtenant to this land); and 4. On three additional tracts owned by the applicant totaling 617.34 acres located in the A. Smothers Survey, Abstract No. 836; the A. L. Estes Survey, Abstract No. 286; the C. B. Howard Survey, Abstract No. 443; the S. Pipkin Survey; the George T. Chappel Survey, Abstract No. 163; and the H. McCaleb Survey, Abstract No. 666. Aplicant seeks also to amend the combined certificate by authorizing diversion from any point on the Leon River adjacent to the above-described lands which includes the following reaches of the river: 1. The upper end of the "upstream" reach is approximately 12 miles E-SE of Comanche, and the lower end is approximately 13 miles ESE of Comanche. The upper end of this reach is at a point N 16 E, 2,500 feet from the SW corner of the Joseph P. Berger Survey, A-62, and is at 31.87 N Latitude and 98.41 W Longitude. The lower end of this reach is at a point N 64 degrees E, 4,500 feet from the aforesaid survey corner and is at 31.87 degrees N Latitude and 98.40 degrees W Longitude. 2. The upper end of the "downstream" reach is approximately 14.5 southeast of Comanche and the lower end is approximately 17.5 miles southeast of Comanche. The upper end of the reach is at a point N 70 degrees E, 3,600 feet from the SW corner of the Archibald Smothers Survey, A-86, and is at 31.86 N Latitude and 98.36 W Longitude. The lower end of this reach is at a point N 21 E, 3,200 feet from the SE corner of the M. McCaleb Survey, A-666 and is at 31.85 N Latitude and 98.31 W Longitude. Ownership of the 617.34-acre additional land to be irrigated is evidenced by three Warranty Deeds recorded in the Deed Records of Comanche County: Volume 704, Page 117; Volume 673, Page 433; and Volume 783, Page 446. The three priority dates for the water included in the amended certificate will remain the same with the exception that they will be junior in time priority to interjacent water right owners of record between Certificate of Adjudications No. 12-3563 and Certificate of Adjudication No.12-2814 as they exist on the date of issuance of any amendment granted pursuant to this application. The application was received on March 28, 2002, and additional information and fees were received on June 19 and July 8, 2002. The application was declared administratively complete on August 12, 2002. Pursuant to 30 TAC §295.158(c)(2)(D), notice is being mailed to the interjacent water rights holders of record on the Leon River in the Brazos River Basin. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by November 20, 2002. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by November 20, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200207223
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2002

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 23, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 23, 2002**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Arnold Palmer Golf Management LLC dba Tour 18 Golf Course; DOCKET NUMBER: 2002-0954-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1012834; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), (f)(3), and (g), §290.122(c)(3)(B), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis, collect and submit the required number of additional routine bacteriological samples, exceeding the maximum contaminant level for total coliform and not providing public notice; PENALTY: $2,188; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Barney Holland Oil Company dba Big Daddy's Express Mart; DOCKET NUMBER: 2002-0901-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0005600; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: retail gasoline station; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system 30 TAC §115.246(1) and (5), and THSC, §382.085(b), by failing to have a copy of the California Air Resource Board Executive Order G- 70-150-AD on-site at the station and available for review, and by failing to have a record of the 2002 annual pressure decay test on-site; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Alayne Furgurson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(3) COMPANY: City of Beckville Public Water Supply; DOCKET NUMBER: 2002-0107-PWS- E; IDENTIFIER: PWS Number 1830002; LOCATION: Beckville, Panola County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the water; and 30 TAC §290.46(h), (i), and §290.44(h), by failing to have a supply of calcium hypochlorite disinfectant on hand, adopt an adequate plumbing ordinance, regulations, or service agreement, and establish the backflow prevention program; PENALTY: $1,688; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Bobkat Agricultural Services and Construction, Inc.; DOCKET NUMBER: 2002-0753-MSW-E; IDENTIFIER: Enforcement Identification Number 17788; LOCATION: Pittsburg, Camp County, Texas; TYPE OF FACILITY: commercial agricultural supply store and a general landscaping and construction service; RULE VIOLATED: 30 TAC §330.5(a), by allegedly having caused and allowed the unauthorized disposal and processing of municipal solid waste; PENALTY: $800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Chemical Lime, Ltd. dba Chemical Lime New Braunfels, Ltd.; DOCKET NUMBER: 2002-0605-AIR-E; IDENTIFIER: Air Account Number CS-0020-O, Air Permit Numbers 7808 and PSD-TX-256M2, and Operating Permit Number O-01122; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: lime manufacturing; RULE VIOLATED: 30 TAC §101.20(1) and (3), Air Permit Number 7808 and PSD-TX-265M2, and 40 Code of Federal Regulations (CFR) §60.7(c), by failing to submit excessive emission reports

on opacity, nitrogen oxide, and carbon monoxide, provide notification to the TCEQ San Antonio regional office prior to the April 2000 performance demonstration, and submit a written report; PENALTY: $24,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2002-0580-PST-E; IDENTIFIER: PST Facility Identification Number 26074; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), §334.50(b)(1)(A), and the Code, §26.3475(c)(1), by failing to conduct effective manual or automatic inventory control and provide a method of release detection; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Eileen Rouke dba Fastop 66; DOCKET NUMBER: 2001-1082-PST-E; IDENTIFIER: PST Facility Identification Number 48209; LOCATION: Van Horn, Culberson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility; 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a), by failing to complete and submit self-certification documentation and make available to a common carrier a valid, current delivery certificate; 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; and 30 TAC §334.21, by failing to pay underground storage tank (UST) fees; PENALTY: $600; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Gulshan Enterprises, Inc. dba Handi Plus 18; DOCKET NUMBER: 2002- 0881-PWS-E; IDENTIFIER: PWS Number 0210052; LOCATION: near Navasota, Brazos County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice of the sampling deficiencies; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: HMW Special Utility District dba Treichel Woods Estates and Willow Oaks Mobile Home Subdivision; DOCKET NUMBER: 2002-0456-PWS-E; IDENTIFIER: PWS Numbers 1012397 and 1011812; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii), and THSC, §341.0315(c), by failing to provide the minimum total storage capacity of 200 gallons per connection and provide the minimum service pump capacity; 30 TAC §290.46(m)(1)(A) and (B), by failing to inspect the ground storage and pressure tanks annually; and 30 TAC §291.93(3), by failing to provide written planning reports; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486 (713) 767-3500.

(10) COMPANY: Jim Hogg County; DOCKET NUMBER: 2002-0382-MSW-E; IDENTIFIER: Permit Number HAW003; LOCATION: Hebbronville, Jim Hogg County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.32(b), by failing to ensure that all solid waste disposal is unloaded only at facilities authorized to accept the type of waste being transported; and 30 TAC §330.5, by failing to prevent the disposal of municipal solid waste at an unauthorized location; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson avenue, Harlingen, Texas 78550-5247 (956) 425-6010.

(11) COMPANY: Jochem Jongsma dba Jochem Jongsma Dairy; DOCKET NUMBER: 2002- 0220-AGR-E; IDENTIFIER: Permit Number 004100-000; LOCATION: Winnsboro, Wood County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.125(1) and Permit Number 004100-000, by failing to operate the facility as reflected in the registration; 30 TAC §321.40(1), Permit Number 004100-000, and the Code, §26.121, by failing to retain all contaminated runoff from the open lots; 30 TAC §321.39(f)(28) and (29), and Permit Number 004100-000, by failing to collect and analyze soil samples and collect and analyze at least one representative sample of irrigation wastewater and solid waste for total nitrogen, total phosphorus, and total potassium; 30 TAC §321.40(7) and Permit Number 004100-000, by failing to maintain a 150-foot buffer zone around a private well; and 30 TAC §321.42(e) and Permit Number 004100- 000, by failing to submit facility certifications; PENALTY: $600; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756 (903) 535-5100.

(12) COMPANY: LB Beaumont LLC dba Hilton Beaumont; DOCKET NUMBER: 2002-0908- PST-E; IDENTIFIER: PST Facility Identification Number 0070420; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: hotel; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide proper release detection; and 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility; PENALTY: $3,600; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892 (409) 898-3838.

(13) COMPANY: LBC Houston, L.P.; DOCKET NUMBER: 2002-0819-AIR-E; IDENTIFIER: Air Account Number HG-0029-P; LOCATION: Seabrook, Harris County, Texas; TYPE OF FACILITY: bulk liquid storage terminal; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 3467B and 462, and THSC, §382.085(b), by failing to comply with the maximum allowable emission rates table, failing to operate the incinerator, and follow the 125,000 barrels per year maximum allowable ethyl hexyl acrylate annual throughput for tank V-9306; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486 (713) 767-3500.

(14) COMPANY: Matthew Smithey dba Mesquite Junction Convenience Store; DOCKET NUMBER: 2002-0783-PST-E; IDENTIFIER: PST Facility Identification Number 48375; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4), and the Code, §26.3475, by failing to inspect the rectifier and other system components; 30 TAC §334.50(b)(1)(a) and (2), and the Code, §26.3475, by failing to monitor tanks in a manner that will detect a release; and 30 TAC §334.48(c), by failing to perform inventory control and reconciliation; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239- 6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480 (210) 490-3096.

(15) COMPANY: Mike's Convenience Store, Inc.; DOCKET NUMBER: 2002-0657-PST-E; IDENTIFIER: PST Facility Identification Number 22305; LOCATION: Cameron, Milam County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.10(b)(1)(B) and (2)(B)(vi), by failing to make records available for inspection; 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to complete and submit the UST registration and self-certification form and obtain a delivery certificate prior to receiving fuel deliveries; 30 TAC §334.48(c), by failing to reconcile inventory control records; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility; PENALTY: $6,900; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239-6589; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826 (254) 751-0335.

(16) COMPANY: Bryan Neal dba Bryan Excavation Company; DOCKET NUMBER: 2002- 0347-AIR-E; IDENTIFIER: Air Account Number 93-7126-R; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §106.496(4), (6), (9) - (13), and THSC, §382.085(b), by failing to keep written record or log of the hours of operation, keep the blower on during operation of the trench burner, keep material piled more than 75 feet from the trench burner, keep material to be burned below the air curtain, keep ash from becoming airborne during removal, keep a copy of the Permit by Rule on-site, and keep a copy of the operating instructions on-site and available for operators; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to keep ash from creating a nuisance condition in a residential area; PENALTY: $600; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Thomas and Sherry Nickels; DOCKET NUMBER: 2002-0961-OSS-E; IDENTIFIER: On-Site Sewage Facility Permit Number 101155; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.7(c)(2), by failing to have a new maintenance contract signed and submitted; PENALTY: $200; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Noble Business, Inc. dba J's Food & News; DOCKET NUMBER: 2002- 0998-PST-E; IDENTIFIER: PST Facility Identification Number 0057049; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii), (iii)(I), and the Code, §26.3475, by failing to record inventory volume measurements and conduct reconciliation of detailed inventory control records; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Occidental Chemical Corporation; DOCKET NUMBER: 2002-0436-AIR-E; IDENTIFIER: Air Account Number SD-0092-F; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: synthetic organic chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 19169, and THSC, §382.085(b), by failing to prevent the unauthorized emission of 308 pounds of vinyl chloride; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Edward Moderow, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Clarence Reeves dba Pleasant Ridge Addition and Timber Creek Addition; DOCKET NUMBER: 2002-0149-PWS-E; IDENTIFIER: PWS Numbers 0490041 and 0490030; LOCATION: near Sadler, Cooke County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), (3)(J), (N), and (P), by failing to provide a sanitary easement around the well, maintain the concrete sealing block around the well head, provide a working flow meter on the well discharge line, and provide an all-weather road to the well site; 30 TAC §290.46(i), (p)(1) and (2) (now 30 TAC §290.46(m)(1)(A) and (B)), by failing to provide a customer service agreement or a plumbing ordinance, conduct annual pressure tank inspections, and conduct annual ground storage tank inspections; 30 TAC §290.43(d)(2), by failing to provide a pressure release device on the pressure tank; 30 TAC §290.45(b)(2)(E) (now 30 TAC §290.45(b)(1)(C)(ii)),by failing to maintain a minimum of 200 gallons per connection ground storage tank capacity; 30 TAC §290.42(i), by failing to use a disinfectant that is certified by American National Standards Institute/National Sanitation Foundation; 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $3,438; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Smart Materials, Inc.; DOCKET NUMBER: 2002-0814-AIR-E; IDENTIFIER: Air Account Number 92-0925-Q; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: local trucking company; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to follow the outdoor burning rules; PENALTY: $800; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Roundup Partners LP dba Star Stop; DOCKET NUMBER: 2002-0963-PST- E; IDENTIFIER: PST Facility Identification Number 0074331; LOCATION: Haskell, Haskell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and the Code, §26.3475(c), by failing to put the automatic tank gauging system into a test mode and reconcile inventory control records; PENALTY: $1,500; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(23) COMPANY: Super Golden Investments Inc. dba Sunmart #114; DOCKET NUMBER: 2002-0268-PST-E; IDENTIFIER: PST Facility Identification Number 0058609; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B), (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit a self-certification form and make available to a common carrier a valid, current delivery certificate; PENALTY: $600; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: The Premcor Refining Group, Inc.; DOCKET NUMBER: 2002-0429-AIR-E; IDENTIFIER: Air Account Number JE-0042-B; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refining and petrochemicals manufacturing; RULE VIOLATED: 30 TAC §101.6(a)(1)(B) and THSC, §382.085(b), by failing to notify the regional office after the discovery of a reportable upset; and 30 TAC §116.115(b)(2)(G), Air Permit Number 2303A, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: $9,375; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Thelin Recycling Company, L.L.C.; DOCKET NUMBER: 2002-0856-AIR- E; IDENTIFIER: Air Account Number TA-3987-H; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: recycling operation; RULE VIOLATED: 30 TAC §101.4 and THSC, §385.085(a) and (b), by failing to control the discharge of an air contaminant; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Ultramar Diamond Shamrock dba Stop N Go #2614; DOCKET NUMBER: 2002-0535-PST-E; IDENTIFIER: PST Facility Identification Number 0035280; LOCATION: Sante Fe, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(B) and THSC, §382.085(b), by failing to replace crimped vapor hoses; PENALTY: $550; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: United Petroleum Transports Inc.; DOCKET NUMBER: 2002-0619-PST-E; IDENTIFIER: Enforcement Identification Number 17943; LOCATION: The Colony, Denton County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: United Petroleum Transports, Inc.; DOCKET NUMBER: 2002-0565-AIR-E; IDENTIFIER: Enforcement Identification Number 14367/2; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel transporter; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline with a Reid vapor pressure greater than seven pounds per square inch absolute; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(29) COMPANY: Universal Urethanes, Inc.; DOCKET NUMBER: 2002-0882-AIR-E; IDENTIFIER: Air Account Number HG-2798-Q; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: poly-foam rubber padding manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a semiannual deviation report; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Jack Vanden Berge dba Jack Vanden Berge Dairy; DOCKET NUMBER: 2002-0797-AGR-E; IDENTIFIER: Wastewater Permit Number 003184-000; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), §321.31(a), Wastewater Permit Number 003184-000, and the Code, §26.121, by failing to prevent an unauthorized discharge; 30 TAC §321.39(f)(11), (24)(B), and Wastewater Permit Number 003184-000, by failing to maintain adequate waste storage pond level logs and provide containment structures for manual stockpiles; and 30 TAC §321.40(1), by failing to construct, operate and maintain facilities on the east side of the facility to contain the runoff; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588- 5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200207201
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 5, 2002

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 22, 2002 Executive Director of the Texas Commission on Environmental Quality, Petitioner v. B & S Cattle Feeders, L.L.C.; Respondent; SOAH Docket No. 582-02-0709; TCEQ Docket No. 2000-0466-AGR-E. In the matter to be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200207226
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2002

Office of the Governor

Notification of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, Texas Government Code, the Office of the Governor announces this notice of consultant contract award, to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' Consolidated Statewide Cost Allocation Plan for the fiscal year ending August 31, 2004 and to prepare a full cost recovery plan under the provisions of state law. The notice for request for proposals was published in the September 13, 2002 *Texas Register,* (27 TexReg 8802).

The contractor will develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

The contract was awarded to MAXIMUS, P.O. Box 88467, Chicago, IL, 60680-1467. The total cost amount of the contract is not to exceed $47,575.

The term of the contract is effective from the date of execution through August 31, 2004.

Persons who have questions concerning this award may contact Denise Francis, Governor's Office of Budget, Planning and Policy, P.O. Box 12428, Austin, Texas 78711, (512) 305-9415.

Royce Poinsett Assistant General Counsel Office of the Governor Issued in Austin, Texas, November 6, 2002.

TRD-200207249
Royce Poinsett
Assistant General Counsel
Office of the Governor
Filed: November 6, 2002

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Opexa Pharmaceuticals Inc	L05592	Houston	000	10/24/02
San Antonio	Austin Nuclear Pharmacy Inc	L05591	San Antonio	000	10/30/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	066	10/17/02
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	072	10/31/02
Bay City	Equistar Chemicals LP	L03938	Bay City	016	10/29/02
Bedford	Dallas Cardiology Associates PA	L05448	Bedford	005	10/24/02
Borger	Chevron Philips Chemical Company LP	L05181	Borger	008	10/30/02
Brownswood	Jaime L. Silva MD FACC, MBA	L05245	Brownswood	001	10/25/02
Carrollton	Stmicroelectronics Inc	L03930	Carrollton	018	10/25/02
College Station	College Station Hospital LP	L02559	College Station	044	10/30/02
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	071	10/16/02
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	025	10/18/02
Dallas	Reed Engineering Inc	L04343	Dallas	010	10/21/02
Dallas	Presbyterian Healthcare System	L04288	Dallas	017	10/23/02
Dallas	Columbia Hosp at Med City Dallas Subsid LP	L01976	Dallas	140	10/30/02
Dallas	Lone Star Cardiology Consultants P A	L04997	Dallas	027	10/30/02
DeSoto	Vishu Lammata MD PA	L05311	DeSoto	007	10/21/02
El Paso	Providence Memorial Hospital	L02353	El Paso	071	10/25/02
El Paso	The University of Texas at El Paso	L00159	El Paso	046	10/25/02
El Paso	El Paso Healthcare System LTD	L02551	El Paso	040	10/29/02
El Paso	El Paso Healthcare System LTD	L02715	El Paso	053	10/31/02
Fort Worth	Physician Reliance LP	L05545	Fort Worth	001	10/21/02
Fort Worth	Dallas Cardiology Associates	L05548	Fort Worth	001	10/30/02
Fredericksburg	Fredericksburg Imaging Center	L03516	Fredericksburg	023	10/24/02
Houston	Mallinckrodt Medical Inc	L03008	Houston	061	10/22/02
Houston	Texas Nuclear Imaging Inc	L05009	Houston	018	10/21/02
Houston	Metracom USA LLC	L05544	Houston	001	10/22/02
Houston	Kellogg Brown & Root Inc	L03660	Houston	011	10/22/02
Houston	Baylor Coll of Med Off of Environmental Safety	L00680	Houston	077	10/23/02
Houston	Syncor International Corporation	L01911	Houston	113	10/30/02
Houston	Memorial Hermann Hospital System Inc	L00650	Houston	063	10/30/02
Kingsville	Christus Spohn Health System Corporation	L02917	Kingsville	030	10/21/02
Lancaster	Columbia Med Ctr at Lancaster Subsidiary LP	L03342	Lancaster	019	10/18/02
Lewisville	Physician Reliance Network Inc	L05526	Lewisville	001	10/18/02
Lubbock	Isorx Radiopharmacy	L05284	Lubbock	007	10/21/02
Marble Falls	Austin Heart PA	L05505	Marble Falls	001	10/28/02
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	033	10/22/02

(CONTINUED) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
New Braunfels	Cemex USA	L02809	New Braunfels	025	10/22/02
Odessa	Golder CAT Scan and MRI Center	L04770	Odessa	004	10/16/02
Pasadena	Sunoco Inc. (R&M)	L03421	Pasadena	012	10/16/02
Pasadena	Gulf Coast Cancer Center	L05185	Pasadena	003	10/16/02
Plano	Columbia Medical Ctr of Plano Subsidiary LP	L02032	Plano	058	10/22/02
Port Arthur	The Premcor Refining Grp Inc Port Arthur Refinery	L04871	Port Arthur	005	10/22/02
San Antonio	Heart Institute of South Texas	L04377	San Antonio	017	10/17/02
San Antonio	Diagnostic Imaging Assoc of San Antonio LTD	L05187	San Antonio	004	10/17/02
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	025	10/25/02
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	066	10/28/02
San Antonio	Petnet Pharmaceuticals Inc.	L05569	San Antonio	001	10/29/02
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	026	10/30/02
Temple	Specialty Pharmacy Services Inc	L04883	Temple	015	10/29/02
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	009	10/22/02
Throughout TX	Solutia Inc	L00219	Alvin	068	10/17/02
Throughout TX	Texas A&M University	L00448	College Station	111	10/29/02
Throughout TX	Southern Ecology Management Inc	L04711	Corpus Christi	003	10/28/02
Throughout TX	AMEC Earth & Environmental Inc	L03622	El Paso	016	10/29/02
Throughout TX	Licon Engineering Company Inc	L05530	El Paso	001	10/30/02
Throughout TX	Fugro South Inc	L05082	Fort Worth	004	10/17/02
Throughout TX	City of Fort Worth Housing Department	L05420	Fort Worth	001	10/29/02
Throughout TX	Bonded Inspections Inc	L00693	Garland	063	10/18/02
Throughout TX	Tracerco/Synetix Services	L03096	Houston	050	10/25/02
Throughout TX	Cooperheat-MQS Inc	L00087	Houston	098	10/25/02
Throughout TX	Radiographic Specialist Inc	L02742	Houston	045	10/25/02
Throughout TX	Continental Airlines Inc	L02718	Houston	035	10/29/02
Throughout TX	C3S Inc	L05537	Houston	001	10/29/02
Throughout TX	RCOA Imaging Services Inc	L05329	Kingwood	007	10/21/02
Throughout TX	Longview Inspection Inc	L01774	La Porte	188	10/18/02
Throughout TX	Longview Inspection Inc	L01774	La Porte	189	10/22/02
Throughout TX	High Tech Testing Service Inc	L05021	Longview	042	10/22/02
Throughout TX	Norm Decon Services LLC	L04917	Midland	016	10/04/02
Throughout TX	Sonic Surveys Inc	L02622	Mont Belvieu	017	10/15/02
Throughout TX	Anatec Inc	L04865	Nederland	050	10/25/02
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	010	10/15/02
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	011	10/29/02
Throughout TX	NDS Products Inc	L00991	Pasadena	039	10/30/02
Throughout TX	Warrington Inc	L03074	Pflugerville	024	10/16/02
Throughout TX	Southwest Research Institute	L00775	San Antonio	067	10/25/02
Throughout TX	Ludlum Measurements Inc	L01963	Sweetwater	059	10/25/02
Throughout TX	CB&I Constructors	L01902	The Woodlands	056	10/31/02
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	030	10/22/02
Victoria	Citizens Medical Center	L00283	Victoria	066	10/17/02

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mount Pleasant	TXU Energy	L04565	Mount Pleasant	007	10/18/02
Nassau Bay	Christus Health	L03291	Nassau Bay	023	10/25/02
Throughout TX	Oilfield Prolog Services Inc.	L01828	Denver City	023	10/21/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Port Arthur	Port Arthur Coker Company LP	L05331	Port Arthur	003	10/22/02
Tahoka	Lynn County Hospital District	L03383	Tahoka	018	10/25/02
Throughout TX	Diamond Wireline Services	L05153	Broussand	001	10/15/02

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	NC-SCHI Inc	L02126	Abilene		10/28/02
Houston	Spectracell Laboratories Inc.	L04617	Houston		10/28/02
Irving	Jake Hersman DVM	L04602	Irving		10/25/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200207178
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 4, 2002

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 licensees: Healthsouth Diagnostic Center of Clear Lake, Webster, M00713; Doctors Hospital 1997 LP, Houston, R00585; Christine Walker, M.D., Forney, R02621; Chiropractic Clinic, Hillsboro, R03551; Merle L. Jones, Jr., D.D.S., Jasper, R11321; Larin B. Perkins, D.C., P.C., Houston, R18991; Family Healthcare Chiropractic Center, PC, Cleburne, R20461; Beta Squared, Inc., Allen, R21314; American Eagle Airlines, Inc., DFW Airport, R22321; Bryan O. Blevins, D.D.S., Lufkin, R23347; Sanmina Corp, Austin, R23478; International Rehabilitation and Therapy

Center, Brownsville, R26251; McAllen Hospitals LP, Edinburg, Z00577.

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, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200207231
Susan Steeg
General Counsel
Texas Department of Health
Filed: November 6, 2002

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: Solvay Polymer, Inc., Deer Park, L00088; Cytogenix, Inc., Houston, L05422.

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, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200207232
Susan Steeg
General Counsel
Texas Department of Health
Filed: November 6, 2002

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Highpoint Dental, Inc., Dallas, R16323, October 17, 2002; Gary Job Corps Center, San Marcos, R20644, October 17, 2002; L-Five, Inc., Garland, R21385, October 17, 2002; Bay Area Rehabilitation Center, Corpus Christi, R21467, October 17, 2002; SOHS Ltd, Houston, R25788, October 17, 2002; Laser Technetics, Houston, Z01336, October 17, 2002.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200207177
Susan Steeg
General Counsel
Texas Department of Health
Filed: November 4, 2002

Notice of Revocation of the Radioactive Material License of Buddy W. Butler

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following radioactive material license: Buddy W. Butler, Odessa, L05115, October 17, 2002.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200207176
Susan Steeg
General Counsel
Texas Department of Health
Filed: November 4, 2002

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by THE SMALL RAILROAD BUSINESS OWNERS ASSOCIATION OF AMERICA, INC., a foreign Multiple Employer Welfare Arrangement (MEWA). The home office is in Washington D. C.

Application for admission to the State of Texas by THE GOOD SAMARITAN EMPLOYERS ASSOCIATION, INC., a foreign Multiple Employer Welfare Arrangement (MEWA). The home office is in Washington D. C.

Application for incorporation to the State of Texas by AUSTIN INDEMNITY LLOYDS INSURANCE COMPANY, a domestic Lloyds/Reciprocal company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200207233
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 6, 2002

Correction of Error

The Texas Department of Insurance adopted on an emergency basis amendments to 28 TAC §5.3700, concerning Designation of Underserved Areas for Residential Property Insurance. The rule was published in the October 25, 2002, *Texas Register* (27 TexReg 9847).

Due to an error in the Department's submitted document, the new language under new subsection (f) "Quarterly report" on page 9850 should be omitted.

TRD-200207265
Sylvia Gutierrez
Program Specialist
Texas Department of Insurance
Filed: November 7, 2002

Texas Lottery Commission

Instant Game No. 316 "Treasures Under the Tree"

1.0 Name and Style of Game.

A. The name of Instant Game No. 316 is "TREASURES UNDER THE TREE". The play style in Game 1 is "add up". The play style in Game 2 "match 3 of 9". The play style in Game 3 is "key symbol match with auto win". The play style in Game 4 is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 316 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 316.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000, HOLLY SYMBOL, STAR SYMBOL, SNOWFLAKE SYMBOL, STOCKING SYMBOL, BAG OF TOYS SYMBOL, SLED SYMBOL, SNOWMAN SYMBOL, BELL SYMBOL, CANDY CANE SYMBOL, TREE SYMBOL, ORNAMENT SYMBOL, CANDLE SYMBOL, STRING OF LIGHTS SYMBOL, GIFT SYMBOL, GINGERBREAD MAN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 316 - 1.2D

Figure 1: GAME NO. 316 - 1.2D

PLAY SYMBOL	CAPTION
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
HOLLY SYMBOL	HOLLY
STAR SYMBOL	STAR
SNOWFLAKE SYMBOL	SNOW
STOCKING SYMBOL	STCKG
TOYS SYMBOL	TOYS
SLED SYMBOL	SLED
SNOWMAN SYMBOL	SNOMN
BELL SYMBOL	BELL
CANDY CANE SYMBOL	CANDY
TREE SYMBOL	TREE
ORNAMENT SYMBOL	ORNMT
CANDLE SYMBOL	CANDL
STRING OF LIGHTS SYMBOL	LIGHT
GIFT SYMBOL	GIFT
GINGERBREAD MAN SYMBOL	GINGR

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. 316 - 1.2E

Figure 2: GAME NO. 316 - 1.2E

CODE	PRIZE
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (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, $8.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $500.

I. High-Tier Prize - $1,000, $5,000, $50,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (316), 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: 316-0000001-000.

L. Pack - A pack of "TREASURES UNDER THE TREE" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TREASURES UNDER THE TREE" Instant Game No. 316 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 "TREASURES UNDER THE TREE" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) play symbols. In Game 1, the player must scratch the gift box. The player must then count up the snowmen symbols found and win the prize in the legend. In Game 2, if the player gets 3 like amounts, the player will win that amount. In Game 3, if the player gets a tree symbol, the player will win $20 automatically. In Game 4, if the player matches any of the YOUR NUMBERS to either WINNING NUMBER, the player will win the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) 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 38 (thirty-eight) 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 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 2: No four or more of a kind.

C. Game 2: No three or more pairs on a ticket.

D. Game 4: No duplicate Winning Numbers on a ticket.

E. Game 4: No duplicate non-winning Your Number play symbols.

F. Game 1: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TREASURES UNDER THE TREE" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TREASURES UNDER THE TREE" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TREASURES UNDER THE TREE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TREASURES UNDER THE TREE" 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 "TREASURES UNDER THE TREE" 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 therefore. 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 3,049,875 tickets in the Instant Game No. 316. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 316- 4.0

Figure 3: GAME NO. 316 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	365,826	8.34
$8	284,655	10.71
$10	203,350	15.00
$20	71,191	42.84
$50	28,184	108.21
$100	3,310	921.41
$500	632	4,825.75
$1,000	120	25,415.63
$5,000	14	217,848.21
$50,000	2	1,524,937.50

*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 3.19. 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. 316 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. 316, 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-200207194
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2002

Instant Game No. 355 "Stinkin' Rich"

1.0 Name and Style of Game.

A. The name of Instant Game No. 355 is "STINKIN' RICH". The play style is "key number match with auto-win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 355 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 355.

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, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $2,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, FLOWER SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 355 - 1.2D

Figure 1: GAME NO. 355 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$2,000	TWO THOU
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
FLOWER SYMBOL	FLOWER

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. 355 - 1.2E

Figure 2: GAME NO. 355 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $2,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (355), 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: 355-0000001-000.

L. Pack - A pack of "STINKIN' RICH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STINKIN' RICH" Instant Game No. 355 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 "STINKIN' RICH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. If any of the player's Your Numbers match either Lucky Number, the player will win the prize shown for that number. If a player gets a Flower 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 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Numbers on a ticket.

D. No duplicate Lucky Numbers on a ticket.

E. The auto win symbol will never appear as one of the Lucky Numbers.

2.3 Procedure for Claiming Prizes.

A. To claim a "STINKIN' RICH" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant

and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "STINKIN' RICH" 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 "STINKIN' RICH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STINKIN' RICH" 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 "STINKIN' RICH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,736,750 tickets in the Instant Game No. 355. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 355- 4.0

Figure 3: GAME NO. 355 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,314,444	8.93
$2	516,281	22.73
$3	328,902	35.68
$5	187,716	62.52
$10	70,462	166.57
$20	23,447	500.57
$50	23,467	500.14
$100	2,940	3,992.09
$500	99	118,553.03
$2,000	39	300,942.31

*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. 355 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. 355, 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-200207195
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2002

Instant Game No. 362 "Hot Hand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 362 is "HOT HAND". The play style is "beat score with all win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 362 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 362.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $16.00, $20.00, $40.00, $80.00, $100, $300, $2,100, 14, 15, 16, 17, 18, 19, 20, 21.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 362 - 1.2D

Figure 1: GAME NO. 362 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$16.00	SIXTEEN
$20.00	TWENTY
$40.00	FORTY
$80.00	EIGHTY
$100	ONE HUND
$300	THR HUND
$2,100	TWYONEHUND
14	FORTN
15	FIFTN
16	SIXTN
17	SVNTN
18	EGTN
19	NINTN
20	TWY
21	ALLWIN

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. 362 - 1.2E

Figure 2: GAME NO. 362 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $80.00, $100, or $300.

I. High-Tier Prize - A prize of $2,100.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (362), 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: 362-0000001-000.

L. Pack - A pack of "HOT HAND" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in

pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT HAND" Instant Game No. 362 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 "HOT HAND" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player's Your Hand beats the Dealer's Hand in any one game across, the player will win the prize shown for that game. If the player reveals a "Blackjack" (21) in any game, the player will win all three prizes automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No duplicate non-winning prize symbols on a ticket.

C. There will be no ties between the Your Hand symbol and the Dealer's Hand symbol in a game.

D. No duplicate games on a ticket.

E. No duplicate Your Hand symbols on a ticket.

F. No duplicate Dealer's Hand symbols on a ticket.

G. The auto win symbol will only appear in the Your Hand area and will win all 3 prizes automatically.

H. Only one auto win symbol will appear on a ticket.

I. The auto win symbol will never appear as one of the Dealer's Hand symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT HAND" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $80.00, $100, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay an $80.00, $100, or $300

ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "HOT HAND" Instant Game prize of $2,100, 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 "HOT HAND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOT HAND" 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 "HOT HAND" 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 9,809,750 tickets in the Instant Game No. 362. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 362- 4.0

Figure 3: GAME NO. 362 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	823,882	11.91
$2	902,573	10.87
$4	98,128	99.97
$8	58,927	166.47
$10	39,231	250.05
$20	29,399	333.68
$40	10,614	924.23
$80	4,897	2,003.22
$100	2,958	3,316.35
$300	728	13,474.93
$2,100	34	288,522.06

*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 4.98. 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. 362 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. 362, 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-200207196
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2002

Instant Game No. 363 "Winner's Circle"

1.0 Name and Style of Game.

A. The name of Instant Game No. 363 is "WINNER'S CIRCLE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 363 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 363.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $16.00, $40.00, $80.00, $200, $3,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 363 - 1.2D

Figure 1: GAME NO. 363 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$16.00	SIXTEEN
$40.00	FORTY
$80.00	EIGHTY
$200	TWO HUND
$3,000	THR THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELV
12	TWL
13	TRT
14	FRN
15	FTN

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. 363 - 1.2E

Figure 2: GAME NO. 363 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
SXN	$16.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, or $16.00.

H. Mid-Tier Prize - A prize of $40.00, $80.00, or $200.

I. High-Tier Prize - A prize of $3,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (363), 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: 363-0000001-000.

L. Pack - A pack of "WINNER'S CIRCLE" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINNER'S CIRCLE" Instant Game No. 363 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 "WINNER'S CIRCLE" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) play symbols. If the player's matches any of the number revealed under the YOUR HORSES in a single race with either of the WINNING HORSES numbers, the player will win the prize for that race. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No ticket will have two (2) or more identical Your Horse numbers within a Race, except where required by multiple wins.

C. Identical Your Horse numbers can appear over the two Races but not within the same Race on a ticket, except where required by multiple wins.

D. No duplicate Winning Horse numbers on a ticket.

E. No duplicate non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNER'S CIRCLE" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $16.00, $40.00, $80.00, 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 an $80.00 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 "WINNER'S CIRCLE" Instant Game prize of $3,000, 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 "WINNER'S CIRCLE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WINNER'S CIRCLE" 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 "WINNER'S CIRCLE" 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 12,204,000 tickets in the Instant Game No. 363. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 363- 4.0

Figure 3: GAME NO. 363 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,025,128	11.90
$2	1,122,720	10.87
$4	170,850	71.43
$8	73,234	166.64
$10	48,880	249.67
$16	36,575	333.67
$40	18,619	655.46
$80	5,283	2,310.05
$200	2,253	5,416.78
$3,000	30	406,800.00

*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 4.87. 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. 363 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. 363, 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-200207197
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2002

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Texas Parks and Wildlife Department

Notice of Public Hearing and Public Comment Opportunity

This is a notice of an opportunity for public comment and a public hearing to be held regarding the application of Riverside Aggregates, Inc. (Riverside) for a new Texas Parks and Wildlife Department sand and gravel permit. Riverside proposes to dredge state-owned sand and gravel from the bed of the Brazos River. The location of the dredging operation would be approximately 7 miles downstream from the Interstate Hwy.10 crossing and approximately 23 miles upstream from the US Hwy. 59 crossing, in Fort Bend and Austin counties. The application proposes removal of up to 40,000 tons per month of sedimentary material.

The hearing will be held on December 6, 2002 at 11:00 a.m. in the Commission Hearing Room at Texas Parks and Wildlife Headquarters, 4200 Smith School Road, Austin, Texas. The purpose of the hearing is to receive public comment on the proposed application. The hearing is not a contested case hearing under the Administrative Procedure Act. Public comment may be submitted at the hearing orally or in writing. If you prefer, you may submit comments in writing rather than attending the public hearing. Written comments must be submitted within 30 days of the publication of this notice in the Texas Register or the newspaper, whichever is later. Written comments should be submitted to: Bob Sweeney, Texas Parks and Wildlife Department., 4200 Smith School Rd., Austin, TX 78744, fax 512/389-8059, email robert.sweeney@tpwd.state.tx.us.

To review a copy of the application or with any questions, please contact Rollin MacRae, Texas Parks and Wildlife Dept., 4200 Smith School Rd., Austin, TX 78744, phone 512/389-4639.

TRD-200207175
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: November 4, 2002

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Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas published a "Notice of Application to Establish Rate Group Reclassification Surcharges" in the November 1, 2002, *Texas Register* (27 TexReg 10494) TRD#200206816.

In the second paragraph the reference to Docket Number 6719 is incorrect. The reference should read, "Docket Number 26719."

TRD-200207264
Anna Carozza Ramirez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2002

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Notice of Amendment to Interconnection Agreement

On October 25, 2002, Time Warner Telecom of Texas, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26857. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26857. 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 27, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26857.

TRD-200207129

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2002

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Notice of Amendment to Interconnection Agreement

On October 25, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and ITC^DeltaCom Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26853. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26853. 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 27, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones

(TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26853.

TRD-200207132
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2002

Notice of Amendment to Interconnection Agreement

On October 29, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Westel, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26869. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26869. 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 27, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26869.

TRD-200207133
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2002

Notice of Amendment to Interconnection Agreement

(Editor's note: In the November 1, 2002, issue of the Texas Register, (27 TexReg 10489), the publication of the "Notice of Amendment to Interconnection Agreement" (TRD-200206988) is a duplication of the text for "Notice of Amendment to Interconnection Agreement" (TRD-200206991). The correct text is being published in its entirety.)

On October 21, 2002, Cellco Partnership, LLC, Southern & Central Wireless, LLC, Verizon Wireless Texas, LLC, and San Antonio MTA, LP doing business as Verizon Wireless and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26834. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26834. 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 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings

concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26834.

TRD-200207219
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2002

Notice of Extension of Time to File Reply Comments on Review of Chapters 24 and 26

On September 13, 2002, the Public Utility Commission of Texas (commission) published a notice of intent (NOI) to review Substantive Rule Chapter 24, Policy Statements, and Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers (27 TexReg 8784). This review is being conducted under Project Number 22067, *Review of Agency Rules Pursuant to the Administrative Procedure Act §2001.039 for FY 2000-2003*. Comments on the NOI were due on October 14, 2002. Reply comments were due on October 28, 2002.

On October 14, 2002, the commission received initial comments from the State of Texas through the Office of Attorney General of Texas (OAG), Consumer Protection Division, Public Agency Representation Section. On October 29, 2002, the commission received reply comments from Southwestern Bell Telephone Company (SWBT). SWBT's comments raised significant new issues that were not in response to the OAG's comments in this proceeding. Therefore, the commission is extending the reply comment period until November 22, 2002. These reply comments should address only the issues raised in the initial comments of the OAG and SWBT.

Comments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, no later than 3:00 p.m. on Friday, November 22, 2002. All comments should refer to Project Number 22067. Persons with questions regarding this notice may contact Roni Dempsey at (512) 936-7308. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989.

TRD-200207165
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2002

Notice of Filing to Withdraw Services Made Pursuant to Substantive Rule 26.208

Notice is given to the public of Southwestern Bell Telephone Company's application filed with the Public Utility Commission of Texas (commission) on November 1, 2002 to withdraw Voice Dial Service.

Docket Title and Number: Application of Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company to Withdraw Voice Dial Pursuant to the commission's Substantive Rule 26.208. Docket Number 26884.

The Application: On November 1, 2002, Southwestern Bell Telephone Company (SWBT) filed an application to withdraw Voice Dial Service pursuant to the commission's Substantive Rule 26.208(h). SWBT stated in its application that its Voice Dial network is manufacturer discontinued and replacement parts are unavailable. As a result, SWBT's Voice Dial network soon will cease to function because of normal wear and tear.

For current Voice Dial customers who utilize the service because of physical or mental disabilities, SWBT will supply and install, free of charge, specially designed customer premises equipment (specialized CPE) that will enable them to enjoy the benefits of hands-free dialing with no recurring charges. According to SWBT, the specialized CPE holds 75 names and numbers, becomes operational as soon as an "off-hook" condition is recognized, and recognizes spoken numbers which enables customers to connect to the network without having phone numbers pre-programmed. SWBT expects these units to remain in working condition for several years. However, after the two-year replacement warranty expires, SWBT will begin providing "Warm Line" service free of charge to any customers whose specialized units become defective. Warm Line service will give the customer "off-hook" capability and will automatically dial Direct Assistance, enabling customers to be connected to the telephone network. Because these customers will have the special needs account identifier, they will be able to make unlimited Directory Assistance calls.

For all current Voice Dial customers who do not utilize the service because of an existing physical or mental disability, SWBT represented that numerous competitive alternatives exist and can be affordably purchased from retail stores in the form of CPE that is pre-equipped with voice dialing capability. SWBT offered to give all other current Voice Dial customers the opportunity to identify themselves as having special needs by submitting a physician's form to SWBT.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-298. All correspondence should refer to Docket Number 26884.

TRD-200207227
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2002

Notice of Interconnection Agreement

On October 24, 2002, Alltel Communications, Inc. and Texas Am-Tel I, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 &

Supplement 2002) (PURA). The joint application has been designated Docket Number 26850. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26850. 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 27, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26850.

TRD-200207130
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2002

Notice of Interconnection Agreement

On October 25, 2002, Hill Country Telephone Cooperative, Inc. and Texas Am- Tel I, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26854. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26854. 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 27, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26854.

TRD-200207131
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2002

Notice of Workshop on Form for Earnings Monitoring Report for Investor-Owned Transmission and Distribution Service Providers

The Public Utility Commission of Texas (commission) will hold on Tuesday, December 17th, 2002, a workshop regarding the development of a form to be used by transmission and distribution investor-owned

utilities for the filing of earnings monitoring reports pursuant to commission Substantive Rule 25.73(b). The workshop will be held from 9:00 a.m. to 12:00 p.m. in the Commissioner's Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 26395, *Form for Earnings Monitoring Report for Investor-Owned Utility Transmission Service Providers*, has been established for this proceeding.

By November 19, 2002, the commission staff will make available in Central Records under Project Number 26395 a copy of a draft report form for discussion at the workshop.

Questions concerning the workshop or this notice should be referred to Darryl Tietjen, Director of Financial Analysis, Financial Review Division, at 512-936-7436 or darryl.tietjen@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207220
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2002

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Texas Racing Commission

Correction of Error

The Texas Racing Commission proposed an amendment to 16 TAC §303.92, concerning Thoroughbred Rules, as published in the November 1, 2002, *Texas Register* (27 TexReg 10272).

Due to a typographical error in paragraph (b)(4) on page 10273, the word "adjustment s" should read "adjustments".

TRD-200207263
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Filed: November 7, 2002

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Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist the University in developing projects deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, a strong bipartisan presence within the firm with considerable experience working with legislative staffs, and a record of substantial success in dealing with the Congress and the Executive Agencies. Excellent skills in university grant and contract awards are necessary. Substantial experience in the development of strategies for corporate participation in university-sponsored development projects especially those relating to environmental and telecommunication issues. Interested parties are invited to express their interest and describe their capabilities on or before December 16, 2002. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a twelve (12) month period with options to renew. Further technical information can be obtained from Dr. Gordon A. Plishker at (409) 294-3621. Deadline for receipt of proposals is 4:00 p.m. December 16, 2002. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

I. GENERAL INSTRUCTIONS

Submit one (1) copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P.O. Box 2448, Sam Houston State University, Huntsville, Texas, 77341-2448 before 4:00 p.m., December 16, 2002. Proposals may be modified or withdrawn prior to the established due date.

II. DISCUSSIONS WITH OFFERERS AND AWARD

The University reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Associate Vice President for Research and Sponsored Programs shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

III. SCOPE OF WORK

1. Representation and assistance in developing projects deemed important to the University.

2. Assistance in obtaining funding for University projects.

3. Consulting and representation as directed by Sam Houston State University.

IV. EVALUATION

A. Criteria for Evaluation of Proposals:

Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firm's strategies.

B. Your proposal should include costs for all related expenses.

V. TERMINATION

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled response opening.

TRD-200207159
Dr. James F. Gaertner
President
Sam Houston State University
Filed: November 1, 2002

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Southwest Texas State University

Request for Proposals

Southwest Texas State University will renew contract #000442 with The Advocacy Group for cultivating new ventures and identifying potential funding sources. The company advises SWT in the preparation of appropriate documents, interfaces with congressional staff and staff of funding agencies and in proposal development and negotiations. The contract award will not exceed $58,800 for the period January 1, 2003 through December 31, 2003. For additional information, the Southwest Texas State University contact person is Dr. Bill Covington at 512-245-2314.

TRD-200207239
William A. Nance
Vice President for Finance and Support Services
Southwest Texas State University
Filed: November 6, 2002

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Stephen F. Austin State University

Notice of Extension of Consulting Services Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of extension of the University's contract with consultant National Environmental Strategies, Inc., 2600 Virginia Avenue, NW, Suite 550, Washington, DC 20037. The original contract award was published in the September 7, 2001, issue of the *Texas Register*, (26 TexReg 6803). The original contract was in the sum of $90,000 plus expenses. Notice of the tentative extension was published in the October 18, 2002, issue of the *Texas Register*, (27 TexReg 9683). The contract has been extended, on a month to month basis, through December 31, 2002, at an additional sum of $7,500 per month, or $30,000 total, plus expenses.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936)468-4305.

TRD-200207228
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: November 5, 2002

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Supreme Court of Texas

Proposed Changes to Texas Rules of Appellate Procedure

Pursuant to Supreme Court of Texas Misc. Docket Order No. 02-9119 and the requirements of the Government Code, the Supreme Court of Texas publishes notice of the following proposed changes to the Texas Rules of Appellate Procedure.

The Court desires public comment not later than November 30, 2002. The Proposed changes , if not modified, would become effective January 1, 2003. Comments should be directed to Chris Griesel, Rules Attorney, P.O. Box 12248, Austin, Texas 78711 or by e-mail at **chris.griesel@courts.state.tx.us**. Comments collected are distributed to all members of the Texas Supreme Court and the Court of Criminal Appeals.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 02-9119

APPROVAL OF AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. The Texas Rules of Appellate Procedure are amended as follows:

a. Rules 4.5, 9.5(a), 11, 12.6, 13.1, 18.1, 19.1, 25.2, 26.2, 29.5, 34.6(e), 34.6(f), 38.6(d), 42.1, 46.5, 47, 52.7, 55.1, 56.3, 68.4(g), and 71 are amended and comments added;

b. Rules 38.2(a)(1) and 55.2(e) are amended without comments; and

c. Rules 9.7 and 33.1(d) are added with comments;

2. These amendments, with any changes made after public comments are received, take effect January 1, 2003;

3. The notes and comments appended to these changes are incomplete, are included only for the convenience of the bench and bar, and are not a part of the rules; and

4. The Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal.

SIGNED AND ENTERED this ____ day of August, 2002.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

James A. Baker, Justice

Deborah G. Hankinson, Justice

Harriet O'Neill, Justice

Wallace B. Jefferson, Justice

Xavier Rodriguez, Justice

4.5 No Notice of Judgment or Order of Appellate Court; Effect on Time to File Certain Documents.

(a) Additional Time to File Documents. A party may move for additional time to file a motion for rehearing in the court of appeals, a petition for review, or a petition for discretionary review, if the party did not- until after the time expired for filing the document- either receive notice of the judgment or order from the clerk or acquire actual knowledge of the rendition of the judgment or order .

(b) Procedure to Gain Additional Time. The motion must state the earliest date when the party or the party's attorney received notice or acquired actual knowledge that the judgment or order had been rendered. The motion must be filed within 15 days of that date but in no event more than 90 days after the date of the judgment or order.

(c) Where to File.

(1) A motion for additional time to file a motion for rehearing in the court of appeals must be filed in and ruled on by the court of appeals in which the case is pending.

(2) A motion for additional time to file a petition for review must be filed in and ruled on by the Supreme Court.

(3) A motion for additional time to file a petition for discretionary review must be filed in and ruled on by the Court of Criminal Appeals.

(d) Order of the Court. If the court finds that the motion for additional time was timely filed and the party did not- within the time for filing the

motion for rehearing, petition for review, or petition for discretionary review, as the case may be- receive the notice or have actual knowledge of the judgment or order, the court must grant the motion. If the court grants the motion, the time for filing the document will begin to run on the date when the court grants the motion.

Notes and Comments

Comment to 2002 change: Subdivision 4.5 is amended to clarify that a party may obtain additional time to file documents when the party fails to receive notice not only of an appellate court judgment, but of an appellate court order- such as one denying a motion for rehearing- that triggers the appeal period.

9.5 Service.

(a) Service of All Documents Required. At or before the time of a document's filing, the filing party must serve a copy on all parties to the [appeal or review] proceeding. But a party need not serve a copy of the record.

Notes and Comments

Comment to 2002 change: The change clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing parties. Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7.

9.7. Adoption by Reference. Any party may join in or adopt by reference all or any part of a brief, petition, response, motion, or other document filed in an appellate court by another party in the same case.

Notes and Comments

Comment to 2002 change: Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.

RULE 11. AMICUS CURIAE BRIEFS

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

(a) comply with the briefing rules for parties;

(b) identify the person or entity on whose behalf the brief is tendered;

(c) disclose the source of any fee paid or to be paid for preparing the brief; and

(d) certify that copies have been served on all parties.

Notes and Comments

Comment to 2002 change: The change expressly recognizes that a court may refuse to consider an amicus curiae brief for good cause.

12.6. Notices of Court's Judgments and Orders. In any proceeding, the clerk of an appellate court must promptly send a notice of any judgment, mandate, or other court order [of the court] to all parties to the proceeding.

Notes and Comments

Comment to 2002 change: Subdivision 12.6 is amended to require the clerk to notify the parties of all of the court's rulings, including the mandate.

13.1. Duties of Court Reporters and Recorders. The official court reporter or court recorder must:

(a)unless excused by agreement of the parties, attend court sessions and make a full record of the proceedings[unless excused by agreement of the parties];

(b) take all exhibits offered in evidence during a proceeding and ensure that they are marked;

(c) file all exhibits with the trial court clerk after a proceeding ends;

(d) perform the duties prescribed by Rules 34.6 and 35; and

(e) perform other acts relating to the reporter's or recorder's official duties, as the trial court directs.

Notes and Comments

Comment to 2002 change: Subdivision 13.1(a) is amended merely for clarification.

18.1 Issuance. The clerk of the appellate court that rendered the judgment must issue a mandate in accordance with the judgment and send it to the clerk of the court to which it is directed and to all parties to the proceeding when one of the following periods expires: . . . .

Notes and Comments

Comment to 2002 change: Subdivision 18.1 is amended consistent with the change in subdivision 12.6.

19.1 Plenary Power of Courts of Appeals. A court of appeals' plenary power over its judgment expires:

(a) 60 days after judgment if no timely filed motion to extend time or motion for rehearing is then pending; or

(b) 30 days after the court overrules all timely filed motions for rehearing , including motions for en banc reconsideration of a panel's decision under Rule 49.7, and motions to extend time to file a motion for rehearing.

Notes and Comments

Comment to 2002 change: Subdivision 19.1 is amended to clarify that a motion for en banc reconsideration extends the court of appeals' plenary power in the same manner as a motion for rehearing addressed to the panel of justices who rendered the judgment or under consideration.

25.2. Criminal Cases.

(a) Rights to Appeal.

(1) Of the State. The State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01.

(2) Of the Defendant. A defendant in a criminal case has the right of appeal under these rules. In a plea bargain case- that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant- a defendant may appeal only:

(A) those matters that were raised by written motion filed and ruled on before trial, or

(B) after getting the trial court's permission to appeal.

[(a)](b) Perfection of appeal. In a criminal case, appeal is perfected by timely filing a ,sufficient notice of appeal. In a death- penalty case, however, it is unnecessary to file a notice of appeal.

[(b)](c) Form and sufficiency of notice.

(1) Notice must be given in writing and filed with the trial court clerk.

(2)[Notice is sufficient if it shows] To be sufficient to invoke the appellate court's jurisdiction of the notice of appeal and the appellate record,

notice must show the party's desire to appeal from the judgment or other appealable order.

[(3)But if the appeal is from a judgment rendered on the defendant's plea of guilty or nolo contendere under Code of Criminal Procedure article 1.15, and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, the notice must:]

[(A) specify that the appeal is for a jurisdictional defect;]

[(B) specify that the substance of the appeal was raised by written motion and ruled on before trial; or]

[(C) state that the trial court granted permission to appeal.]

(3) To be sufficient to invoke the appellate court's full jurisdiction, notice also must:

(A) if the State is appealing, comply with Code of Criminal Procedure article 44.01, or

(B) if the defendant is the appellant, bear the trial court's certification of the defendant's right of appeal under Rule 25.2(a)(2). The certification should be part of the original notice, but may be added by timely amendment under this rule or Rule 37.1

(d) Amending the Notice. An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the [appellant's]appealing party's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the [appellant's] appealing party's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.

[(c)](e) Clerk's duties. The trial court clerk must note on the copies of the notice of appeal the case number and the date when the notice was filed. The clerk must then immediately send one copy to the clerk of the appropriate court of appeals and one copy of a defendant's notice of appeal to the State's attorney.

[(e)](f) Effect of appeal. Once the record has been filed in the appellate court, all further proceedings in the trial court- except as provided otherwise by law or by these rules- will be suspended until the trial court receives the appellate-court mandate.

Notes and Comments

Comment on 2002 change: Rule 25.2, for criminal cases, is amended. Subdivision 25.2 (a)(2), which replaces former subdivision 25.2(b)(3), conforms to Code of Criminal Procedure article 44.02. Subdivision 25.2(b) is given the requirement that a notice of appeal be in "sufficient" form, which codifies the decisional law. Subdivision 25.2(c)(1) requires a minimum level of sufficiency for the notice to invoke the jurisdiction of the appellate court over the preliminary stages of the appeal. Subdivision 25.2(c)(3) adds a requirement that every defendant's notice of appeal be certified by the trial court. If the notice is not certified, the appeal has not been fully perfected under subdivision 25.2(b). Similarly, the State's appeal is not fully perfected if its notice is not in compliance with Code of Criminal Procedure 44.01. If a sufficient notice of appeal is not filed after the appellate court deals with the defect (see Rule 37.1), preparation of an appellate record and representation by an appointed attorney may cease. A form of notice of appeal for defendants is provided in an appendix to these rules.

[Form to be included in Appendix:]

The State of Texas	In the ____________ Court
v.	of
________, Defendant	___________ County, Texas

DEFENDANT'S NOTICE OF APPEAL IN CRIMINAL CASE

This is notice of the defendant's desire to appeal from the judgment or other appealable order in this case.

______________________________	______________________________
Defendant (if not represented by counsel) Mailing address: Telephone number: Fax number (if any):	Counsel State Bar of Texas identification number: Mailing address: Telephone number: Fax number (if any):

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL

I, judge of the trial court, certify in this criminal case that the defendant's appeal:

☐ is not in a plea-bargain case, and the defendant has the right of appeal. [or]

☐ is in a plea-bargain case, but is on matters that were raised by written motion filed and ruled on before trial, and the defendant has the right of appeal. [or]

☐ is in a plea-bargain case, but is taken after getting the trial court's permission to appeal, and the defendant has the right of appeal. [or]

☐ is in a plea-bargain case, and the defendant has NO right of appeal.

______________________________	______________________
Judge	Date Signed

("A defendant in a criminal case has the right of appeal to a court of appeals under these rules. In a plea bargain case — that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant — a defendant may appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after getting the trial court's permission to appeal." TEXAS RULE OF APPELLATE PROCEDURE 25.2(a)(2).)

26.2 Criminal Cases

(a) By the Defendant. [~~The~~] A notice of appeal that complies with Rules 25.2(c) (1) and (2)must be filed:

(1) within 30 days after the day sentence is imposed or suspended in open court, or after the day the trial court enters an appealable order; or

(2) within 90 days after the day sentence is imposed or suspended in open court if the defendant timely files a motion for new trial.

(b) By the State. If the State is making an appeal under Code of Criminal Procedure article 44.01(a) or (b), a [~~The~~] notice of appeal that complies with Rules 25.2(c) (1) and (2) must be filed within 15 days after the day the trial court enters the order, ruling, or sentence to be appealed.

Notes and Comments

Comment on 2002 change: In criminal cases the time limit for filing the notice of appeal is made applicable to only the minimally sufficient notice. If a notice is otherwise insufficient, the appellate

clerk will notify the parties, and the appealing party will have 30 days to remedy the defect; see Rule 37.1. Subdivision 26.2(b) is conformed to Code of Criminal article 44.01.

29.5. Further Proceedings in Trial Court. While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and may make further orders, including one dissolving the order appealed from, and if permitted by law, may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes with or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal.

Notes and Comments

Comment to 2002 change: Rule 29.5 is amended to acknowledge that a trial court may be prohibited by law from proceeding to trial during the pendency of an interlocutory appeal, as for example by section 51.014(b) of the Texas Civil Practice and Remedies Code.

33.1 Preservation; How Shown. . . .

(d)Sufficiency of Evidence Complaints in Nonjury Cases. In a nonjury case, a complaint regarding the legal or factual insufficiency of the evidence including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact- may be made for the first time on appeal in the complaining party's brief.

Notes and Comments

Comment to 2002 change: The last sentence of former Rule 52(d) of the Rules of Appellate Procedure has been reinstated.

34.6 Reporter's Record. . . .

(e) Inaccuracies in the Reporter's Record.

(1) Correction of Inaccuracies by Agreement. The parties may agree to correct an inaccuracy in the reporter's record, including an exhibit, without the court reporter's recertification.

(2) Correction of Inaccuracies by Trial Court. If the parties [~~dispute whether the reporter's record accurately discloses what occurred in the trial court, or the parties agree that it is inaccurate but cannot agree on corrections to the reporter's record~~] cannot agree on whether or how to correct the reporter's record so that the text accurately discloses what occurred in the trial court and the exhibits are accurate, the trial court must after notice and hearing settle the dispute. After doing so, the court must order the court reporter to [~~conform~~] correct the reporter's record by conforming the text to what occurred in the trial court or by adding an accurate copy of the exhibit, and to certify and file in the appellate court a corrected reporter's record.

(3) Correction After Filing in Appellate Court. If the dispute arises after the reporter's record has been filed in the appellate court, that court may submit the dispute to the trial court for resolution. The trial court must then ensure that the reporter's record is made to conform to what occurred in the trial court.

(f) Reporter's Record Lost or Destroyed. An appellant is entitled to a new trial under the following circumstances:

(1) if the appellant has timely requested a reporter's record;

(2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or- if the proceedings were electronically recorded- a significant portion of the recording has been lost or destroyed or is inaudible;

(3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and

(4) if the [~~parties cannot agree on a complete reporter's record~~] lost, destroyed or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

Notes and Comments

Comment to 2002 change: Subparagraphs 34.6(e) and (f) are amended to clarify the application to exhibits. The language in subparagraph (e) referring to the text of the record is simplified without substantive change. The language in subparagraph (f) is clarified to require agreement only as to the portion of the text at issue, and to provide that the trial court may determine that a copy of an exhibit should be used even if the parties cannot agree.

38.2 Appellee's Brief.

(a) Form of Brief.

(1) An appellee's brief must conform to the requirements of [~~subdivision~~]Rule 38.1, ...

38.6 Time to File Briefs. . . .

(d) Modification of filing time. On motion complying with Rule 10.5(b), the appellate court may extend the time for filing [~~the appellant's~~] a brief and may postpone submission of the case. A motion to extend the time to file [~~the~~] a brief may be filed before or after the date the brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

Notes and Comments

Comment to 2002 change: Rule 38.6(d) is amended to clarify that an appellate court may postpone the filing of any brief, not just the appellant's brief.

Rule 42. Dismissal; Settlement

42.1. Voluntary Dismissal and Settlement in Civil Cases.

(a)On Motion or By Agreement. The appellate court may dispose of an appeal as follows:

[~~(1) in accordance with an agreement signed by all parties or their attorneys and filed with the clerk; or~~]

~~(2) in accordance with a motion of appellant to dismiss the appeal or affirm the appealed judgment or order; but no party may be prevented from seeking any relief to which it would otherwise be entitled.~~]

(1) On Motion of Appellant. In accordance with a motion of appellant, the court may dismiss the appeal or affirm the appealed judgment or order unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

(2) By Agreement. In accordance with an agreement signed by the parties or their attorneys and filed with the clerk, the court may:

(A) render judgment effectuating the parties' agreement;

(B) set aside the trial court's judgment without regard to the merits and remand the case to the trial court for rendition of judgment in accordance with the agreement; or

(C) abate the appeal and permit proceedings in the trial court to effectuate the agreement.

(b) Partial Disposition. A severable portion of the proceeding may be disposed of under (a) if it will not prejudice the remaining parties.

(c) Effect on Court's Opinion. In dismissing a proceeding, the appellate court will determine whether to withdraw any opinion it has already issued. An agreement or motion for dismissal cannot be conditioned on withdrawal of the opinion.

(d)Costs. Absent agreement of the parties, the court will tax costs against the appellant.

Notes and Comments

Comment to 2002 change: Rule 42.1 is amended to clarify the procedures for implementing settlements on appeal and to expressly give courts flexibility in effectuating settlements. The rule is also clarified to expressly permit the dismissal of an appeal without dismissal of the action itself. The rule does not permit an appellate court to order a new trial merely on the agreement of the parties absent reversible error, or to vacate a trial court's judgment absent reversible error or a settlement.

46.5. Voluntary Remittitur. If a court of appeals reverses the trial court's judgment because of a legal error that affects only part of the damages awarded by the judgment, the affected party may within 15 days after the court of appeals' judgment voluntarily remit the amount [that the court of appeals determined should not have been awarded by the judgment] that the affected party believes will cure the reversible error. A party may include in a motion for rehearing without waiving any complaint that the court of appeals erred a conditional request that the court accept the remittitur and affirm the trial court's judgment as reduced. If the court of appeals determines that the voluntary remittitur is not sufficient to cure the reversible error, but that remittitur is appropriate, the court must suggest a remittitur in accordance with Rule 46.3. If the remittitur is timely filed and the court of appeals determines that the voluntary remittitur cures the reversible error, then the remittitur must be accepted and the trial court judgment affirmed.

Notes and Comments

Comment to 2002 change: Subdivision 46.5 is amended to clarify the procedure for offering a voluntary remittitur. The offer may be made in a motion for rehearing without waiving any complaint that the court of appeals erred, thereby extending the deadlines for further appeal.

RULE 47. OPINIONS, DISTRIBUTION, AND CITATION

47.1. Written Opinions. The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.[Where the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it.]

47.2. Designating and Signing [of] Court Opinions; Participating Justices.

(a) Civil and Criminal Cases. Each opinion for the court must be designated either an "Opinion" or a "Memorandum Opinion." A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court.

(b) Criminal Cases. In addition, each opinion in a criminal case must bear the notation "publish" or "do not publish," as determined- before the opinion is handed down- by a majority of the justices who participate in considering the case. Any party may move the appellate court to change the notation, but the court of appeals must not change a notation after the Court of Criminal Appeals has acted on any party's petition for discretionary review or other request for relief. The Court of Criminal Appeals may, at any time, order that a "do not publish" notation be changed to "publish."

47.3.[Publication] Distribution of Opinions. All opinions of the courts of appeals are open to the public and must be made available to public reporting services, print or electronic.

[(a)The Initial Decision. A majority of the justices who participate in considering a case must determine- before the opinion is handed down- whether the opinion meets the criteria stated in 47.4 for publication. If those criteria are not met, the opinion will be distributed only to the persons specified in Rule 48, but a copy may be furnished to any person on request by that person.]

[(b) Notation on Opinions. A notation stating "publish" or "do not publish" must be made on each opinion.]

[(c) Reconsideration of Decision on Whether to Publish. Any party may move the appellate court to reconsider its decision regarding publication of an opinion but the court of appeals must not order any unpublished opinion to be published after the Supreme Court or Court of Criminal Appeals has acted on any party's petition for review, petition for discretionary review, or other request for relief.]

[(d) High-Court Order. The Supreme Court or the Court of Criminal Appeals may, at any time, order a court of appeals' opinion published.]

47.4. [Standards for Publication.] Memorandum Opinions. If the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it. An opinion may not be designated a memorandum opinion if the author of a concurrence or dissent opposes that designation. An opinion [should be published only if] must be designated a memorandum opinion unless it does any of the following:

(a) establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases;

(b) involves [a] issues of constitutional law or other legal issues [of continuing public interest] important to the jurisprudence of Texas;

(c) criticizes existing law; or

(d) resolves an apparent conflict of authority.

47.5. Concurring and Dissenting Opinions. Only a justice who participated in the decision of a case may file or join in an opinion concurring in or dissenting from the judgment of the court of appeals. Any justice on the court may file an opinion in connection with a denial of a hearing or rehearing en banc. [A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the criteria established in 47.4. If a concurrence or dissent is to be published, the majority opinion must be published as well.]

47.6. [Action of] Change in Designation by En Banc Court. [Sitting en banc, the court may modify or overrule a panel's decision regarding the signing or publication of the panel's opinion or opinions.] A court en banc may change a panel's designation of an opinion.

47.7. Citation of Unpublished Opinions. Opinions not designated for publication by the court of appeals under these or prior rules have no precedential value [and must not] but may be cited [as authority by counsel or by a court] with the notation, "(not designated for publication)."

Notes and Comments

Comment to 2002 change: The rule is substantively changed to discontinue the use of the "do not publish" designation in civil cases, to require that all opinions of the court of appeals be made available to public reporting services, and to remove prospectively any prohibition against the citation of opinions as authority in civil cases. The rule favors the use of "memorandum opinions" designated as such except in certain types of cases but does not change other requirements, such as those in Pool v. Ford Motor Co., 715 S.W.2d 629, 635-636 (Tex. 1986). An opinion previously designated "do not publish" has no precedential value but may be cited. The citation must include the notation, "(not designated for publication)."

52.7. Record. . . .

(c) Service of Record on All Parties. Relator and any party who files materials for inclusion in the record must- at the same time- serve on each party:

(1) those materials not previously served on that party as part of the record in another original appellate proceeding in the same or another court; and

(2) an index listing the materials filed and describing them in sufficient detail to identify them.

Notes and Comments

Comment to 2002 change: Subdivision 52.7(c) is added to specify how record materials in original proceedings are to be served. Ordinarily, a party must serve record materials and an index of those materials on all other parties. But when materials have already been served in related original proceedings, they need not be served again. Examples are when original proceedings raising the same issues are brought in both the court of appeals and the Supreme Court, or when separate original proceedings are filed arising out of the same underlying lawsuit. The purpose of this procedure is to ensure that all parties have record materials readily available without requiring unnecessary duplication.

55.1 Request by Court. A brief on the merits must not be filed unless requested by the Court. With or without granting the petition for review, the Court may request the parties to file briefs on the merits. In appropriate cases, the Court may realign parties and direct that parties file consolidated briefs.

Notes and Comments

Comment to 2002 change: Subdivision 55.1 is clarified to provide that the Court may realign parties require consolidated briefing for a clearer and more efficient presentation of the case.

55.2 Petitioner's Brief on the Merits. . . .

(e) Statement of Jurisdiction. The [~~petition~~] brief must state, without argument, the basis of the Court's jurisdiction.

56.3. Settled Cases. If a case is settled by agreement of the parties and [~~all~~] the parties so move, the Supreme Court may grant the petition if it has not already been granted and, without hearing argument or considering the merits, render a judgment to effectuate the agreement. The Supreme Court's action may include setting aside the judgment of the court of appeals or the trial court without regard to the merits and remanding the case to the trial court for rendition of a judgment in accordance with the agreement. The Supreme Court may abate the case until the lower court's proceedings to effectuate the agreement are complete. A severable portion of the proceeding may be disposed of if it will not prejudice the remaining parties. In any event, the Supreme Court's order does not vacate the court of appeals' opinion unless the order specifically provides otherwise. An agreement or motion cannot be conditioned on vacating the court of appeals' opinion.

Notes and Comments

Comment to 2002 change: Subdivision 56.3 is clarified to provide for partial settlements.

68.4. Contents of Petition. A petition for discretionary review must be as brief as possible. It must be addressed to the "Court of Criminal Appeals of Texas" and must state the name of the party or parties applying for review. The petition must contain the following items: . . .

(g) [~~Reasons for Review.~~] Argument. The petition must contain a direct and concise argument, with supporting authorities, amplifying the reasons for granting review. See Rule 66.3. The court of appeals' opinions will be considered with the petition, and statements in those opinions need not be repeated if counsel accepts them as correct.

Notes and Comments

Comment to 2002 change: The original catch line of subdivision 68.4(g) was "Reasons for Review," which caused confusion because of its similarity to the catch line in subdivision 66.3 ("Reasons for Granting Review"). It is changed to "Argument."

RULE 71. DIRECT APPEALS

71.1. Direct Appeal. Cases in which the death penalty has been assessed under Code of Criminal Procedure article 37.071, and cases in which bail has been denied in non-capital cases under Article I, Section 11a of the Constitution, are appealed directly to the Court of Criminal Appeals.

71.2. Record. The appellate record should be prepared and filed in accordance with Rules 31, 32, 34, 35 and 37, except that the record must be filed in the Court of Criminal Appeals. After disposition of the appeal, the Court may discard copies of juror information cards or other portions of the clerk's record that are not relevant to an issue on appeal.

71.3. Briefs. Briefs in a direct appeal should be prepared and filed in accordance with Rule 38, except that the brief need not contain an appendix (Rule 38.1(j)), and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

Notes and Comments

Comment to 2002 change: A requirement that briefs include a statement regarding oral argument is added.

TRD-200207236
Andrew Weber
Clerk of the Supreme Court of Texas
Supreme Court of Texas
Filed: November 6, 2002

Texas Department of Transportation

Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves. The public hearing will be held on Thursday, December 19, 2002, at 9:00 a.m., in the first floor

hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, or (512) 305-9196 at least two working days prior to the hearing so that appropriate arrangements can be made.

Copies of the criteria/information will be available beginning November 19, 2002, at the Texas Department of Transportation's Riverside Annex, 118 E. Riverside Drive, Bldg. 118, Room 2B-6, Austin, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: James L. Randall, P.E., P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on February 3, 2003.

TRD-200207229
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 6, 2002

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (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
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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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