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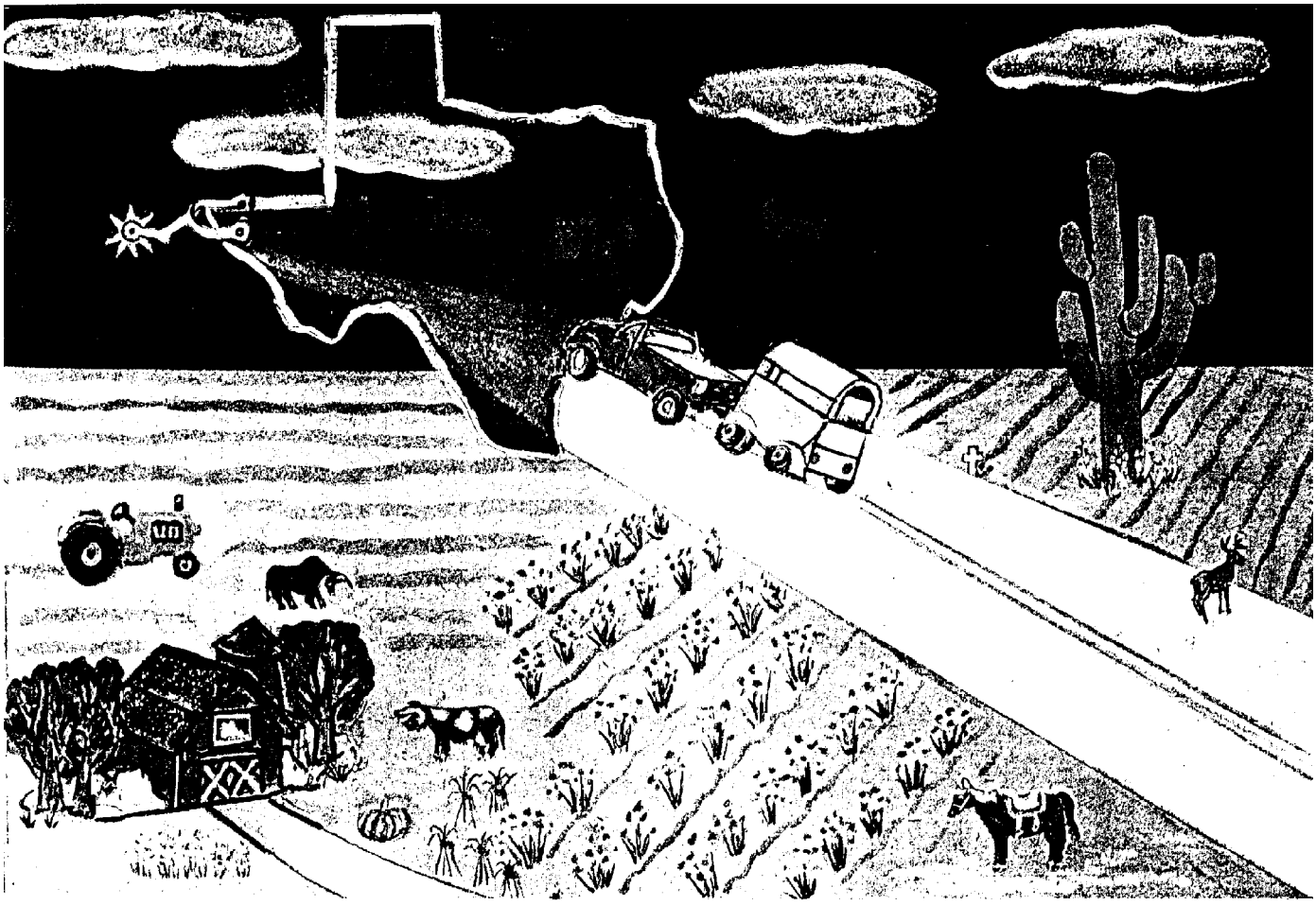

Ramiro Saldivar, 8th Grade

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

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

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Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

ADOPTED RULES

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

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

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

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

THE GOVERNOR

As required by 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 12, 2002

Appointed to the Finance Commission of Texas for a term to expire on February 1, 2008, James H. Lee of Houston (replacing Marlene Martin of San Antonio whose term expired).

Appointed to the Public Utility Commission of Texas for a term to expire on September 1, 2005, Julie Caruthers Parsley of Austin (replacing Mario Max Yzaguirre who resigned).

Rick Perry, Governor

TRD-200207378

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THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0571

The Honorable Patricia Gray, Chair, House Committee on Public Health, Texas House of Representatives, P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether a building owned and operated by a municipal hospital authority, but leased in part to a private business, is subject to the exclusive public use requirement of article XI, section 9 of the Texas Constitution, and related questions. (RQ-0547-JC)

S U M M A R Y

A building owned and operated by the Tomball Hospital Authority (the "Authority"), but leased in part to a private business for operation as a "long-term care hospital," must satisfy the exclusive public use requirement to qualify for property tax exemption under article VIII, section 2 of the Texas Constitution and section 11.11(a) of the Tax Code. That requirement is not, as a matter of law, satisfied by the statutory tax-exemption language of the Authority's enabling statute, section 262.004 of the Health and Safety Code. To satisfy the exclusive public use requirement, the leased space must be used exclusively "for the health, comfort, and welfare of the public" served by the Authority's hospital. Whether the proposed use of the leased space as a privately operated long-term care hospital satisfies the exclusive public use requirement necessitates investigation and resolution of facts. If the leased space is not used exclusively for public purposes, the Authority would be liable under the law for taxes assessed against the building.

Opinion No. JC-0572

Mr. Richard F. Reynolds, Executive Director, Texas Workers' Compensation Commission, Southfield Building, MS-4D 4000 South IH-35 Austin, Texas 78704-7491

Re: Whether a Workers' Compensation Commission rule requiring that written communications be sent to both a claimant and the claimant's attorney creates an exception to Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from communicating with a person who is represented by counsel. (RQ-0551-JC)

S U M M A R Y

A Texas Workers' Compensation Commission rule requiring that written communications related to a claim be sent to both a claimant and the claimant's attorney, see 28 Tex. Admin. Code §102.4(b) (2002), creates an exception to Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from communicating with a person who is represented by counsel, see Tex. Disciplinary R. Prof'l Conduct 4.02(a) (precluding communications with a person represented by counsel unless lawyer "is authorized by law to do so").

Opinion No. JC-0573

Ms. Michele L. Henricks, Executive Director, Court Reporters Certification Board, P. O. Box 13131 Austin, Texas 78711-3131

Re: Whether any action is required of the Court Reporters Certification Board in the implementation of section 57.021(d) of the Government Code. (RQ-0553-JC)

S U M M A R Y

Section 57.021(d) of the Government Code, which authorizes the Texas Commission for the Deaf and Hard of Hearing to "maintain a list of persons certified by the Court Reporters Certification Board as specialists in real-time captioning," does not require the Court Reporters Certification Board to take any action. This provision is insufficient to confer on the Board the authority to certify specialists in real-time captioning. Tex. Gov't Code Ann. §57.021(d) (Vernon Supp. 2002). No other provision of law confers such certification authority on the Board.

Opinion No. JC-0574

The Honorable Sherry L. Robinson, Waller County Criminal District Attorney, 836 Austin Street, Suite 105 Hempstead, Texas 77445

Re: Procedure by which a prosecutor may obtain a waiver from the state of a conflict of interest. (RQ-0550-JC)

S U M M A R Y

No statute authorizes a county judge to obtain a waiver from the commissioners court on behalf of the county of a conflict of interest under Rule 1.06(b) of the Texas Disciplinary Rules of Professional Conduct. The validity of a judicial proceeding will not be affected if the county judge represents an individual in a court of his or her county without the consent of the commissioners court.

Opinion No. JC-0575

Honorable Gwyn Shea, Secretary of State, State of Texas, P.O. Box 12697, Austin, Texas 78711.

Re: Meaning of "state officer" for purposes of article XVI, section 1 of the Texas Constitution, which requires such individuals to sign an anti-bribery statement. (RQ-0555-JC)

S U M M A R Y

Article XVI, section 1(b) of the Texas Constitution requires elected and appointed officers to sign an anti-bribery statement before taking the oath or affirmation of office required by article XVI, section 1(a). State-level officers, but not local officers, must file the signed statement with the secretary of state. Local officers must sign the statement and retain it with the official records of the office. Questions about whether a particular officer is a "state officer" within article XVI, section 1(c) may be resolved by consulting relevant statutes, constitutional provisions, and judicial decisions.

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-200207403
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 13, 2002

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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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §§12.5, 12.7, 12.9

The Texas Historical Commission proposes amendments to Chapter 12, §§12.5, 12.7 and 12.9 (related to the Texas Historic Courthouse Preservation Program). These amendments are proposed as a means of clarification and strengthening requirements.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period during which these amendments are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering these amendments.

F. Lawerence Oaks, Executive Director, has also determined that for the first five year period the amendments are in effect, the public benefit anticipated will be to have a clearer understanding of the rules of the Texas Historic Courthouse Preservation Program. There will be no effect on small or micro-businesses. There is no anticipated economic costs to individuals required to comply with the amendments as proposed.

Comments on the proposed rules may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276 (512-463-6100). Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under Texas Government Code, §442.005 (q) which authorized the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

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

§12.5. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Texas Historic Courthouse Preservation Program. Means the grant or loan program created by the enactment of HB 1341 by the 76th Texas Legislature (1999).

(2) The Courthouse Fund Account. Means a separate account in the general revenue funds. The account consists of transfers made to the account, payment on loans made under the historic courthouse preservation program, grants and donations received for the purposes of the historic courthouse preservation program, and income earned on investments of money in the account.

(3) Texas Courthouse Preservation Program Advisory Committee. Means a committee that serves the commission in matters concerning the courthouse program.

(4) Historic courthouse. Means a county courthouse that is at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building.

(5) Historic courthouse project. Means an undertaking to preserve or restore a historic courthouse.

(6) Historic courthouse structure. Means a courthouse structure that is one or more of the following:

(A) a county courthouse that is at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building.

(B) listed on the National Register of Historic Places;

(C) designated a Recorded Texas Historic Landmark;

(D) designated a State Archeological Landmark;

(E) determined by the commission to qualify as an eligible property under the designations noted above;

(F) certified by the commission to other state agencies as worthy of preservation; or,

(G) designated by an ordinance of a municipality with a population of more than 1.5 million as historic.

(7) Master preservation plan or master plan. Means a comprehensive planning document that includes the historical background of a courthouse, as well as a detailed analysis of its architectural integrity, current condition, and future needs for preservation. The commission shall promulgate specific guidelines for developing the document.

(8) Restoration. Means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restored period. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(9) Reconstruction. Means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(10) Preservation. Means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(11) Rehabilitation. Means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(12) Match requirement. Means the percentage of the total grant project cost that must be provided by a county in the form of a prior capital expenditures match, prior in-kind match, current cash match, current in- kind match, or planning match.

(13) Prior capital expenditures match. Means monies previously spent by a county for past courthouse preservation projects in the 30-month period prior to the date of application, excluding monies required to match a previous Texas Historic Courthouse Preservation Program grant unless otherwise determined by the Texas Historical Commission .

(14) Prior in-kind match. Means materials donated to a county for past courthouse preservation projects in the 30-month period prior to the date of application.

(15) Current cash match. Means monies to be paid by a county as part of the preservation project described in a current request for grant or loan funding.

(16) Current in-kind match. Materials to be donated as part of the preservation project described in a current request for grant or loan funding.

(17) Planning match. Means monies spent on an approved master preservation plan.

§12.7. Grant or Loan Program.

(a) Property Eligibility. In order to be eligible for grants or loans under the courthouse program, a county's historic courthouse must be determined a historic courthouse structure as defined in §12.5 of this chapter.

(b) Master plan requirement. In order to be eligible for funding, a county must have completed a current master preservation plan, completed or updated in the 30-month period prior to the date of application, and received approval of the plan from the commission.

(c) Types of Assistance. The commission may provide financial assistance in the form of grants or loans. Grant or loan recipients shall be required to follow the terms and conditions of the Texas Historic Courthouse Preservation Program and other terms and conditions imposed by the commission at the time of the grant award or loan.

(d) Match for grant or loan assistance. Applicants eligible to receive grant or loan assistance must provide a minimum of 15% of the total project cost, of which not more than one half of the match may be derived from prior capital expenditures, prior in-kind match, and current in-kind match, and not less than one half of the match must be derived from current cash match and/or planning match. Prior capital expenditure and prior in-kind matches constitute credit for commission approved capital and planning expenditures during the 30-month period prior to the date of application.

(e) Allowable use of grant or loan monies.

(1) A county that receives money under the courthouse program must use the money only for preservation, reconstruction, rehabilitation, and restoration expenses that the commission determines eligible.

(2) All work must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised).

(3) Individual grants or loans may not exceed $4 million.

(4) The commission may grant less than the amount requested in a courthouse grant application.

(f) Administration. The courthouse program shall be administered by the commission.

(g) Advisory Committee.

(1) The purpose of the advisory committee is to advise the commission on matters related to the Texas Historic Courthouse Preservation Program.

(2) The advisory committee shall consist of:

(A) members from the different geographical areas of the state;

(B) an equal number of members from counties with a population of:

(i) 24,999 or less;

(ii) 25,000 to 75,000; and

(iii) 75,001 or more; and

(C) at least the following members:

(i) one or more elected county officials;

(ii) one or more members of historical organizations or persons with knowledge of and experience in preservation who are not elected county officials; and

(iii) one or more members of the general public who do not meet the requirements of (C) (i) or (C) (ii) of this subchapter.

(3) The advisory committee shall meet annually, or as directed by the commission, to discuss issues related to paragraph (g)(1) of this section and provide a report in written form, or in other formats as determined by the commission, at a regularly scheduled commission meeting, or at times as otherwise determined by the agency.

(4) The advisory committee shall be abolished on August 31, 2003, unless specifically continued by an affirmative vote of the commission.

(h) Procedures. The commission shall adopt procedures, and revise them as necessary, to implement the Texas Historic Courthouse Preservation Program.

(i) Compliance with current program grant manual and all other rules, statutes, policies, procedures and directives is mandatory for all historic courthouse projects unless written exception is provided by the Texas Historical Commission due to unforeseen circumstances beyond the control of grantee or grantor.

§12.9. Application Requirements and Considerations.

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

(1) the address of the courthouse;

(2) a statement of the historic designations that the courthouse has or is likely to receive;

(3) a statement of the amount of money or in-kind contributions that the county commits to contribute to the project;

(4) a statement of previous allowable money or in-kind contribution the county will use for their match;

(5) a statement of whether the courthouse is currently functioning as a courthouse;

(6) copies of any plans, including the required master preservation plan, that the county may have for the project;

(7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;

(8) statements of support from local officials and community leaders; and

(9) the current cost estimate of the proposed project; and

(10) any other information that the commission may require.

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

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

(1) the status of the building as a functioning courthouse;

(2) the age of the courthouse;

(3) the degree of endangerment;

(4) the courthouse is subject to a current conservation easement or covenant held by the commission;

(5) the proposal is in conformance with the approved master plan and addresses the work in proper sequence;

(6) the county agrees to place/extend a preservation covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Other Considerations.

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

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

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

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

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

(e) As a condition for a county to receive money under the courthouse fund, the commission must [~~may~~] require creation of a conservation easement on the property with a minimum term of 50 years, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants in perpetuity at the time of application.

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

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

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

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

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

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

TRD-200207200

F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.41

The Public Utility Commission of Texas (commission) proposes amendments to §25.41, relating to Price to Beat. The commission has recently completed the first set of fuel factor adjustments requested by affiliated retail electric providers (REPs) pursuant to subsection (g) of the rule. As a result of experience gained in those proceedings, the commission has determined that several improvements to the rule could potentially benefit retail customers and the development of the retail electricity market. The proposed amendments will amend certain requirements related to adjustments to the price to beat, including: the number of trading days used to calculate the natural gas price average for fuel factor adjustments; the threshold of price changes needed to justify an adjustment to the fuel factors; the criteria that apply in order to substitute an electricity price index for the natural gas price index; the specific adjustments to the price to beat that will be considered following the true-up proceedings conducted under Public Utility Regulatory Act (PURA) §39.262; and the processing guidelines for price to beat adjustments. The amendments also make other minor changes that are intended to clarify other aspects of the rule. Project Number 26556 is assigned to this proceeding.

The commission set the initial price to beat fuel factors in the fall of 2001, in part based upon a ten day average of New York Mercantile Exchange (NYMEX) Henry Hub natural gas futures prices for each month of 2002 of approximately $3.11 per million British thermal unit (MMBtu). Section 25.41(g)(1) permitted the affiliated REPs to request adjustments to those fuel factors if the ten-day average of the closing forward twelve months diverged from the $3.11 per MMBtu price by more than 4.0%, as the commission had previously determined that such a change would be reflective of a "significant change in the market price of natural gas and purchased energy used to serve retail customers." (*See Rulemaking relating to Price to Beat*, Project Number 21409; Order adopting §25.41, relating to Price to Beat, March 20, 2001 at 64-65) During the spring of 2002, all of the affiliated REPs requested adjustments to the price to beat fuel factors citing increases in the natural gas price average from 16.8% to 22.69%. The commission ultimately approved the requests, albeit at slightly lower levels of increases than requested in some cases.

The following chart shows the 12-month forward natural gas price average on a daily, ten-day, 20-day, and 30-day basis for each day from September 4, 2001 through October 10, 2002. Generally, natural gas futures prices remained at or below the $3.11 per MMBtu embedded within the original price to beat fuel factors until March of 2002. After that point in time, prices have stayed consistently higher than $3.11 per MMBtu. Gas price futures did fall for several months after the adjustment requests were made by the affiliated REPs, but have since risen back to the level they were at the time of the adjustment requests. This evidence suggests that §25.41(g)(1) has worked as intended by permitting the affiliated REPs to adjust the price to beat fuel factors to recognize significant changes in the price of natural gas and purchased energy.

Figure: 16 TAC Chapter 25--Preamble

While the commission believes it to be highly unlikely that an affiliated REP can "game" the adjustment process outlined in §25.41(g)(1) through the timing fluctuations in the NYMEX futures market, the commission is concerned that use of a ten-day average may inadvertently lead to a case where an affiliated REP may capture a temporary spike in the market. The commission notes that during a two-week period in June 2002, daily futures prices and the ten-day average of futures price both reflected a temporary increase in natural gas prices that subsequently reversed as gas prices continued a decline for the next seven weeks. In order to prevent a transitory change in gas prices such as this from being reflected in the fuel factor, the commission proposes to amend subsection (g)(1)(A)-(D) such that future adjustments will be based on a 20-day average. The commission also proposes to amend subsection (g)(1)(A) to remove the flexibility in what days prior to a filing for adjustment an affiliated REP can be used to calculate the gas price average by stating that the 20-day period must end the day before the filing is made by the affiliated REP.

The commission also proposes altering the threshold in subsection (g)(1)(C) and (D) for a significant change from 4.0% to 5.0% in order to harmonize the threshold with the threshold to adjust provider of last resort rates contained in §25.43(l)(1), relating to Provider of Last Resort (POLR). Additionally, the commission noted in the Order Adopting §25.41 that the "fact that affiliated REPs may only request fuel factor changes twice per year together with the materiality threshold…should guard against unnecessary fuel factor adjustments." However, the commission notes that, if an affiliated REP retains the ability to request one or both adjustments near the end of a calendar year, there may be less restraint in requesting an adjustment because the affiliated REP would gain the ability to make another adjustment in January of the next year. The commission proposes to raise the threshold in subsection (g)(1)(C) and (D) to 10% for adjustments requested after November 15th of a calendar year.

During the recent fuel factor adjustment cases, the commission found it difficult to complete processing of the cases within the 45-day time period prescribed by subsection (g)(1)(D). The commission proposes to amend subsection (g)(1)(D) and (E) to give more flexibility in the processing of the cases, as well as permit the parties in the cases to mutually agree to extend the timelines and/or agree upon interim rate relief.

The commission continues to believe that it is appropriate to allow affiliated REPs to request changes in the price to beat fuel factor based upon changes in the price of electricity, once a sufficiently liquid and reliable index exists. However, the commission notes that such an index has yet to develop, and there appears to

be a lack of standardized products traded in Texas that would aid in the development of such indices. In order to facilitate and encourage the development of liquid electricity indices in Texas, the commission proposes an amendment to subsection (g)(1)(F) to encourage the development of liquid trading hubs in Texas, and proposes to remove the requirement that the power generation company affiliated with the affiliated REP must have finalized its stranded cost determination before the affiliated REP may transition to the use of electricity prices to adjust the price to beat fuel factor.

In order to provide more certainty to both retail customers and REPs, the commission also proposes amendments to subsection (f)(3) of the rule to provide more specificity as to what adjustments to the price to beat the commission will consider to following the true-up proceedings. The commission proposes to adjust the fuel factor downward following the true-up, if natural gas and/or purchased energy prices are lower than that the prices used to calculate the then-current fuel factors. Additionally, the commission proposes to adjust the base rate portions of the price to beat to account for changes in non-bypassable charges.

The commission also proposes several other clarifying changes and corrections of typographical errors in subsections (c), (g), and (l).

Brian Lloyd, Director, Retail Market Oversight Section, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lloyd has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the requirements related to adjustments to the price to beat, reduce the potential that transient fluctuations in the market price of natural gas and purchased power will be reflected in permanent adjustments to the fuel factors, and provide more certainty to retail customers and market participants as to how the price to beat may change following the true-up proceedings. There will be no adverse economic effect on small businesses or micro- businesses as a result of enforcing this section. There may be an anticipated economic cost to persons who are required to comply with the section as proposed as it alters the methodology under which an affiliated REP can request adjustments to the price to beat; however, such costs are difficult to project as they are largely dependent upon changes in the market prices of natural gas and purchased energy. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Lloyd has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act, Texas Government Code Annotated §2001.022 (Vernon 2000 & Supplement 2002).

When commenting on specific subsections of the proposed amendment, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on the specific subsections of the rule, the commission requests specific comments on the following questions.

1. The current rule provides for the use of a ten-day rolling average of NYMEX natural gas futures prices in order to determine whether or not a significant change in the market price of natural gas and purchased energy has occurred. While it does not appear that the recent adjustments to the price to beat fuel factors have captured a temporary change in natural gas price, but instead appear to have reflected significant and long-term price change, a review of natural gas prices over the course of 2002 suggests that there is a potential for capturing temporary changes in gas price due to the use of a ten-day average. Does the proposed change to a 20-day average, combined with the changes in the significance threshold reduce or minimize the potential for such an occurrence?

2. In order to provide more certainty to both retail customers and the marketplace, the commission has proposed additional detail as to what factors will be considered with respect to adjustments to the price to beat following the stranded cost true-up proceedings pursuant to the commission's authority under PURA §39.202. Is the proposed methodology appropriate, or should a different adjustment mechanism be used? If the commission instead ordered that the price to beat be adjusted (either up or down) such that initial headroom that existed on January 1, 2002 was achieved, what would be the proper method of distributing adjustments to the price to beat, between the base rate components and the fuel factor component of the price to beat?

3. What objective criteria should the commission consider adopting with respect to what constitutes a "sufficiently liquid" electricity commodity index or trading hub? The commission desires comments on specific criteria, such as volume of trades, number of participants, spread between bid and ask prices, etc.

Comments on the proposed amendment (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, within 21 days after publication. Reply comments may be submitted within 28 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 26556.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, January 7, 2003 at 10:00 a.m. in the Commissioners' Hearing Room.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §39.202 which establishes the price to beat obligation for affiliated retail electric providers.

Cross Reference to Statutes: PURA §§14.002, 39.202, and 39.262.

§25.41. Price to Beat.

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

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

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

(3) Headroom -- The difference between the average price to beat (in cents per kilowatt hour (kWh)) and the sum of the average non-bypassable charges or credits approved by the commission in a proceeding pursuant to PURA §39.201, or PURA Subchapter G (in cents per kWh) and the representative power price (in cents per kWh). Headroom may be a positive or negative number. A separate headroom number shall be calculated for the typical residential customer and the typical small commercial customer. The calculation for the typical residential customer shall assume 1,000 kWh per month in usage. The calculation of the typical small commercial customer shall assume [~~assumer~~]35 kilowatts (kW) of demand and 15,000 kWh per month in usage.

(4) Nonaffiliated REP -- Any competitive retailer conducting business in a transmission and distribution utility's (TDU's) certificated service territory that is not affiliated with that TDU unless the competitive retailer is a successor in interest to a retail electric provider affiliated with that TDU.

(5) - (8) (No change.)

(9) Representative power price -- The simple average of the results of:

(A) a request for proposals (RFP) for full-requirements service of 10% of price to beat load for a duration of three years expressed in cents per kWh; and

(B) the price resulting from the capacity auctions required by PURA §25.381 of this title (relating to Capacity Auctions) for baseload capacity entitlements expressed in cents per kWh. The calculation of the price resulting from the capacity auctions shall assume dispatch of 100% of the entitlement and shall use the most recent auction of a 12-month forward strip of entitlements, or the most recent aggregated forward 12 months of entitlements. Alternatively, the affiliated REP may conduct an RFP or purchase auction for equivalent products for 10% of its price to beat load.

(10) (No change.)

(11) Small commercial customer -- A non-residential retail customer having a peak demand of 1,000 kilowatts (kW) or less. For purposes of this section, the term small commercial customer refers to a metered point of delivery. Additionally, any non- residential, nonmetered point of delivery with peak demand of less than 1,000 kW shall also be considered a small commercial customer.

(12) (No change.)

(d) - (f) (No change.)

(g) Adjustments to the price to beat.

(1) Fuel factor adjustments. An affiliated retail electric provider may request that the commission adjust the fuel factor(s) established under subsection (f)(3) of this section not more than twice in a calendar year if the affiliated retail electric provider demonstrates that the existing fuel factor(s) do not adequately reflect significant changes in the market price of natural gas and purchased energy used to serve retail customers. As part of a filing made pursuant to this paragraph, an affiliated REP may also request an adjustment to the seasonality imparted to the fuel factor in accordance with subsection (f)(3)(C) of this section. Alternatively, the commission may, as part of its approval of an adjustment to the fuel factor, impose a change in the seasonality imparted to the fuel factor. The methodology for calculating the adjustment to the fuel factor(s) shall be the following:

(A) For each [~~business~~]day of the 20 trading-day [~~ten-day~~] period ending the day [~~no more than ten business days~~] before the filing of a fuel factor adjustment application, an average of the closing forward 12-month NYMEX Henry Hub natural gas prices, as reported in the *Wall Street Journal*, is calculated.

(B) The average forward price for each [~~business~~] day calculated in subparagraph (A) of this paragraph will then be averaged to determine a 20 trading-day[~~ten-day~~] rolling price.

(C) The percentage difference between the averaged 20 trading-day[~~ten-day~~] rolling price calculated under subparagraphs (A) and (B) of this paragraph and the averaged [~~ten-day rolling~~] price used to calculate the current fuel factor(s) is calculated. If the current fuel factor was calculated through an adjustment under subparagraph (E) of this paragraph, then the averaged 20 trading-day [~~ten-day~~] rolling price calculated concurrent with that adjustment shall be used. If the percentage difference is 5.0% [~~4.0%~~] or more, then the current fuel factor(s) may be adjusted, unless the filing is made after November 15 of a calendar year, in which event the percentage difference must be 10% or more.

(D) If the percentage difference calculated in subparagraph (C) of this paragraph exceeds 5.0% (or 10% if applicable), then the current fuel factors are deemed to be unreflective of significant changes in the market price of natural gas and purchased energy. To adjust the current fuel factor(s), the percentage difference is added to one and then multiplied by the current factor(s). The results are the adjusted fuel factor(s) that will be implemented according to the procedural schedule in clause (i) and (ii) of this subparagraph:

(i) if no hearing is requested within 15 days after the petition has been filed, a final order shall be issued within 20 days, or as soon as practicable thereafter, after the petition is filed;

(ii) if a hearing is requested within 15 days after the petition is filed, a final order shall be issued within 45 days, or as soon as practicable thereafter, after the petition is filed. The 45 day timeline for issuance of an order may be extended upon mutual agreement of the parties. Such agreement may provide for interim rate relief.

(E) In addition to the adjustment permitted under subparagraphs (A)-(D) of this paragraph, an affiliated REP may also request an adjustment to the fuel factor if the headroom under the price to beat decreases as a result of significant changes in the price of purchased energy. In making a request under this subparagraph:

(i) an affiliated REP shall demonstrate that:

(I) the representative power price has changed such that the headroom under the price to beat has decreased; and

(II) the adjustment to the fuel factor is necessary to restore the amount of headroom that existed at the time that the initial price to beat fuel factor was set by the commission using then current forecasts of the representative power price.

(III) an affiliated REP making an adjustment under this subparagraph shall also file the gas price calculation in subparagraphs (A) and (B) of this paragraph for purposes of subsequent adjustments to the fuel factor based on changes in natural gas prices.

(ii) the commission will issue a final order on an application filed under this subparagraph within 60 days, or as soon as practicable thereafter, after the application is filed. The 60 day timeline for issuance of an order may be extended upon mutual agreement of the parties. Such agreement may provide for interim rate relief.

(F) The commission shall, upon a showing made by an interested party, that a sufficiently liquid electricity commodity trading hub (or hubs) or index has developed for the affiliated REP's relevant geographic or power region, allow an affiliated REP to transition to the use of [~~an~~] electricity commodity prices at that hub or index to adjust the fuel factor for significant changes in the price of purchased energy. [~~The commission shall only allow the use of the index after the power generation company affiliated with the affiliated REP has finalized their stranded cost determination.~~] After the commission has made a finding that a sufficiently liquid electricity commodity trading hub or index has developed, the affiliated REP shall be required to perform an additional adjustment under subparagraphs (A) through (D) or (E) of this paragraph before utilization of the prices at that trading hub or index to change the fuel factor so that a benchmark electricity [~~index~~] price can be established. Subsequent changes to the fuel factor shall be based on the percentage change in the electricity commodity index using the same methodology for the natural gas price adjustment under subparagraphs (A)- (D) of this paragraph.

(2) (No change.)

(3) True-up adjustment. The commission may adjust the price to beat following the true- up proceedings under PURA §39.262. The commission may consider the following adjustments to the price to beat on a schedule consistent with the processing of the TDU rate adjustment application pursuant to §25.263(n) of this title (relating to True-up Proceeding):

(A) Fuel factor adjustment. A 20 trading-day rolling price shall be calculated in accordance with paragraph (1)(A)-(D) of this subsection. If the 20 trading-day rolling price is less than the price used to calculate the then-current fuel factor (i.e. the percentage difference is negative), then the price to beat fuel factor shall be adjusted downward by the percentage difference in the prices.

(B) Base rate adjustment. Using the typical residential and small commercial usage calculations described in subsection (c)(3) of this subsection, the base rate components of the price to beat shall be adjusted such that the difference between the average price to beat base rate and the average non-bypassable charges that exist following the proceeding pursuant to §25.263(n) of this title is the same as existed on January 1, 2002. Each component of the base rates shall be adjusted in the same proportion in complying with this section.

(C) Filing by affiliated REP. An affiliated REP shall make filings necessary to implement subparagraphs (A) and (B) of this paragraph on a schedule to be determined by the commission.

(h) - (k) (No change.)

(l) Filing requirements.

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

(3) No later than December 31, 2001, each transmission and distribution utility shall determine the power consumption threshold targets under subsection (i) of this section for residential and small commercial customers within its certificated service area and shall file this information with the commission and shall also make this information publicly available through its Internet website. Each transmission and distribution utility, together with its affiliated REP, shall update the small commercial power consumption threshold as needed to reflect additional small commercial load that has met the requirements of subsection (h)(3) of this section and therefore is appropriately [~~appropriate~~] removed from the calculation of the threshold target. Concurrent with this update, the transmission and distribution utility, together with its affiliated REP, shall provide, for each group of aggregated customers that have been removed from the calculation of the threshold target, the customers' names, electric service identifiers, size of the customers' loads (individually and in the aggregate), and how the customers meet the requirements of subsection (h)(3). Such information may be filed under confidential seal. All certificated REPs shall be deemed to have standing to review such filings.

(4) - (5) (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 8, 2002.

TRD-200207336
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.173

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to Goal for Renewable Energy. The proposed amendment will increase the deficit banking allowance for renewable energy credits (RECs) to 10% of a competitive retailer's annual REC requirement, and extend certain deadlines related to the 2002 compliance period. Project Number 26848 is assigned to this proceeding.

Staff has proposed this amendment in response to concerns raised by various retail electric providers (REPs) about shortages and liquidity problems in the REC market that may affect a REP's ability to meet its 2002 obligations under §25.173. Staff also notes the transmission-related curtailment of wind power in West Texas, a problem that is being addressed in Project Number 25819, *PUC Proceeding to Address Transmission Constraints Affecting West Texas Wind Power Generators*.

Preamble Question Number 1. This amendment would increase the rule's deficit banking allowance from 5.0% to 10% of a competitive retailer's annual REC requirement for the 2002 and 2003 compliance periods. Subsection (m)(2) contains the deficit banking provision. The commission invites specific comment on whether this change is necessary, how it would be beneficial, and on whether an amount other than 10% would be more appropriate.

Preamble Question Number 2. The amendment would also add a paragraph to subsection (l) that would extend the time REPs have to comply with their 2002 REC requirements. The commission invites comment on whether or not extending the deadlines

for the 2002 compliance period is necessary or would be beneficial.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

David Hurlbut, Senior Economist, Market Oversight Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hurlbut has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the section will be to mitigate compliance difficulties caused by transmission-related curtailment of renewable energy resources in West Texas. Allowing competitive retailers to carry over a larger portion of their REC requirement to the following year will provide them with more flexibility in meeting their requirements. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Hurlbut has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, January 6, 2003, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed amendment (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, within 30 days after publication. Reply comments may be submitted on or before Thursday, January 2, 2003. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 26848.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically PURA §15.023 which authorizes the commission to impose an administrative penalty against a person regulated under PURA who violates PURA or a rule or order adopted under PURA; PURA §36.204 which authorizes the commission, when establishing rates for an electric utility, to provide additional incentives for renewable resources; PURA §39.101 which provides that customers are entitled to have access to providers of energy generated by renewable energy resources; and, PURA §39.904 which requires that the commission to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 36.204, 39.101 and 39.904.

§25.173. Goal for Renewable Energy.

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

(l) Settlement process. Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each competitive retailer must submit credits to the program administrator from its account equivalent to its REC requirement for the previous compliance period. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in subsection (m)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (o) of this section.

(3) For the 2002 compliance period, the deadline set forth in paragraph (2) of this subsection and all related deadlines in this section shall be extended three months.

(m) Trading program compliance cycle.

(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.

(2) A competitive retailer may incur a deficit allowance equal to 10% [~~5.0%~~]of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% [~~5.0%~~]deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% [~~5.0%~~]of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10%[~~5.0%~~]of the second year REC allocation. All competitive retailers incurring a 10% [~~5.0%~~]deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.

(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.

(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.

(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.

(n)-(q) (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 8, 2002.

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Rhonda G. Dempsey
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Public Utility Commission of Texas
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. PROGRAM DEVELOPMENT
SUBCHAPTER P. TESTING AND DEVELOPMENTAL EDUCATION

19 TAC §5.315

The Texas Higher Education Coordinating Board proposes amendments to §5.315, concerning levels set for passing scores on alternative tests. Specifically, these amendments will change the passing standards on certain sections of approved alternative tests that may be used in lieu of the Texas Academic Skills Program (TASP) test.

Dr. Leticia Hinojosa, Assistant Commissioner for Participation and Success, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Hinojosa has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a slight decrease in the number of students required to enroll in developmental education for TASP purposes. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Dr. Leticia Hinojosa, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Leticia.hinojosa@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §51.306 and §51.3061, which provides the Coordinating Board with the authority to adopt rules concerning the TASP.

The amendments affect Texas Education Code, §51.306 and §51.3061.

§5.315. Criteria for Meeting TASP Requirements.

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

(c) Minimum Passing Standards

(1) (No change.)

(2) Minimum passing scaled score standards for the approved alternative tests are:

(A) ASSET: Reading Skills--38 [~~41~~]; Elementary Algebra--37 [~~38~~]; Writing Skills (objective)--40; and Written Essay--6.

(B) COMPASS: Reading Skills--74 [~~81~~]; Algebra--34 [~~39~~]; Writing Skills (objective)--59; and Written Essay--6.

(C) MAPS: Reading Comprehension--112 [~~114~~]; Elementary Algebra Skills--611 [~~613~~]; Conventions of Written English--310; and Written Essay--6.

(D) ACCUPLACER: Reading Comprehension--73 [~~78~~]; Elementary Algebra--59 [~~63~~]; Sentence Skills--80; and Written Essay--6.

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

(d) (No change.)

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

Filed with the Office of the Secretary of State, on November 7, 2002.

TRD-200207311
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 30, 2003
For further information, please call: (512) 427-6162

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CHAPTER 12. PROPRIETARY SCHOOLS
SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §12.30

The Texas Higher Education Coordinating Board proposes amendments to §12.30 of Board rules, concerning the Texas Academic Skills Program test for students graduating from degree-granting proprietary institutions. Specifically, this amendment will put into rule a congruent policy for meeting TASP requirements for students attending degree granting proprietary institutions. Currently, Coordinating Board rules allow exemptions from TASP requirements for students attending public community and technical colleges and universities, such as obtaining certain scores on the ACT, SAT, or TAAS, and allow alternative tests (Asset, Compass, Maps and Accuplacer) to be used in lieu of the TASP test. Further, students can satisfy TASP requirements by either passing the tests or earning a grade of "B" or better in an appropriate course approved by the Board after completing all required developmental education, retaking the appropriate section of the TASP test, and still not passing.

Dr. Glenda Barron, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Barron has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be the expanded ability for students attending degree granting proprietary institutions to satisfy the

requirements of TASP. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Dr. Glenda Barron, P.O. Box 12788, Austin, Texas 78711, (512) 427-6250, or by e-mail to Glenda.Barron@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by proprietary institutions.

The amendments affect Texas Education Code, §132.063.

§12.30. Texas Academic Skills Program (TASP).

Any individual who enrolls in an associate degree program at a proprietary institution on or after September 1, 1997, shall pass all sections of a test taken for [~~the~~] Texas Academic Skills Program (TASP) Test purposes, or otherwise meet TASP requirements as outlined under Chapter 5, Subchapter P, §5.314(a)(3) - (12), §5.34(b)(1) - (11), and §5.315 of this title (relating to Testing and Developmental Education) [~~at the level established by the Board~~] before the degree may be awarded. Individuals enrolled in an authorized Associate of Occupational Studies degree program are exempt from this requirement.

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §13.194

The Texas Higher Education Coordinating Board proposes amendments to §13.194, concerning confidentiality of information related to the proposal evaluation for the grant awards under the Technology Workforce Development Grant Program. Specifically, these amendments will make confidential any information related to the evaluation and selection of proposals for the Technology Workforce Development Grant Program except copies of the reviews will be given to each project leader without the identity of the reviewer and the names and affiliations of the reviewers will be published as a group after the review. At the same time, the term "project leader" used in §13.194 was substituted for the term "individual investigator", because the grant programs are not subject to investigation but are projects requiring a leader.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Domelsmith has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be the protection of proprietary information submitted as part of proposals and assurance to reviewers of the confidentiality of the review process. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §51.837(a), which provides the Coordinating Board with the authority to award grants under Technology Workforce Development Grant Program on a competitive, peer-review basis and Texas Education Code, §61.051(p), which provides the Coordinating Board with the authority to administer trusteed funds, grant programs, research competition awards, and other funds and programs as directed by the legislature.

The amendments affect the Texas Education Code, §51.837.

§13.194. Proposal Evaluation.

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

(d) Any information related to the evaluation and selection of proposals for the grant awards shall be confidential unless released by the Board pursuant to subsections (e) and (f) of this section.

(e) [~~(d)~~] Reviews will not be disclosed to persons outside the Board at any time, except that each project leader [~~individual investigator~~] (grant applicant) will receive a copy of the reviewers of his or her proposal with the names, affiliations, and any other identifying characteristics of the reviewers redacted; and

(f) [~~(e)~~] The names and affiliations of reviewers will be released as a group, without an identifying link to any grant application, until after the review process is complete.

(g) [~~(f)~~] For Fiscal Year 2002, the Commissioner shall make the grant awards. Thereafter, the Board shall make grant awards. Decisions of the Commissioner/Board are final.

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 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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CHAPTER 14. RESEARCH FUNDING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §14.1, §14.2

The Texas Higher Education Coordinating Board proposes new §14.1 and §14.2, concerning the administration of the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Definitions). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.1. Definitions.

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

(1) Coordinating Board--the Texas Higher Education Coordinating Board.

(2) Commissioner--the Commissioner of Higher Education.

(3) Advisory Committee--the Advisory Committee on Research Programs appointed by the Coordinating Board pursuant to Texas Education Code, §142.003 and §143.004.

(4) Research program--the Advanced Research Program.

(5) Technology program--the Advanced Technology Program.

(6) Technology transfer program--the Technology Development and Transfer Program.

(7) Research funding programs--the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program.

(8) Eligible public institution--an institution of higher education, as defined by Texas Education Code, §61.003(8).

(9) Eligible independent institution--a private institution of higher education eligible to grant degrees in Texas as defined in Texas Education Code, §61.003(15).

(10) Investigator--an applicant whose name appears as a principal investigator or co-principal investigator on a pre-proposal or proposal submitted for any of the research funding programs.

(11) Supplemental grants program--the Supplemental Grants Program for High School Teachers.

§14.2. Authority and Scope.

(a) Authority for this chapter is provided in the Texas Education Code, Chapters 142 and 143 respectively, on the Advanced Research Program and Advanced Technology Program.

(b) Unless otherwise specified, this chapter applies to the Coordinating Board, any Texas institution of higher education seeking funding under the programs in this chapter and any tenured or tenure-track faculty member of such institution or research professional in a permanent position in such institution.

(c) This chapter provides the Coordinating Board the regulating rules applicable to the administration of the Advanced Research Program, Advanced Technology Program, Technology Development and Transfer Program, and other related programs.

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 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 30, 2003
For further information, please call: (512) 427-6162

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SUBCHAPTER B. ADVANCED RESEARCH PROGRAM

19 TAC §§14.11 - 14.13

The Texas Higher Education Coordinating Board proposes new §§14.11 - 14.13, concerning the administration of the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Advanced Research Program). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated

as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.11. Purpose.

(a) The research program supports research designed to attract and retain the best students and researchers and to help provide the knowledge base needed for innovation.

(b) The research program is established to encourage and provide support for basic research conducted in eligible public institutions in Texas in the research areas specified by Texas Education Code, §142.002 and as revised by the Advisory Committee.

§14.12. Eligibility.

(a) Only eligible public institutions may apply for the research program.

(b) An eligible public institution must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(c) An eligible public institution must have adopted an intellectual property policy meeting the minimal standards set out in Texas Education Code, §51.680. A copy of the policy must be approved by the Commissioner and be on file at the Coordinating Board.

§14.13. Evaluation Criteria.

(a) Proposals for the research program shall be evaluated on the basis of merit and soundness of the proposal, capability of the investigator, student involvement and research training opportunities, and adequacy of institutional commitment and resources.

(b) The Coordinating Board and the Advisory Committee may delete or add any relevant criteria for evaluating the proposals for the research program.

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

Filed with the Office of the Secretary of State, on November 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER C. ADVANCED TECHNOLOGY PROGRAM

19 TAC §§14.31 - 14.33

The Texas Higher Education Coordinating Board proposes new §§14.31 - 14.33, concerning the administration of the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Advanced Technology Program). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.31. Purpose.

(a) The technology program is established to promote the State's economic growth and diversification by increasing the number and quality of scientists and engineers in Texas, enlarging the technology base available to business and industry, creating new products and services, and attracting new industries to Texas.

(b) The technology program is designed to provide support for technology research conducted in eligible public or independent institutions in Texas in the research areas specified by Texas Education Code, §143.003.

§14.32. Eligibility.

(a) Any eligible institutions whether public or independent may apply for the technology program.

(b) An eligible public or independent institution must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(c) An eligible public or independent institution must have adopted an intellectual property policy meeting the minimal standards set out in Texas Education Code, §51.680. A copy of the policy must be approved by the Commissioner and be on file at the Coordinating Board.

§14.33. Evaluation Criteria.

(a) Proposals for the technology program shall be evaluated on the basis of merit and soundness of the proposal, capability of the investigator, student involvement and research training opportunities, and adequacy of institutional commitment and resources.

(b) Prospects for leveraged funds and technology transfer may be considered when evaluating proposals for the technology program.

(c) The Coordinating Board and the Advisory Committee may delete or add any relevant criteria for evaluating the proposals for the technology program.

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

Filed with the Office of the Secretary of State, on November 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 30, 2003
For further information, please call: (512) 427-6162

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SUBCHAPTER D. TECHNOLOGY DEVELOPMENT AND TRANSFER PROGRAM

19 TAC §§14.51 - 14.53

The Texas Higher Education Coordinating Board proposes new §§14.51 - 14.53, concerning the administration of the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Technology Development and Transfer Program). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.51. Purpose.

The technology transfer program is established to support technology development and the transfer of that technology to the private sector in Texas.

§14.52. Eligibility.

(a) Any eligible institutions whether public or independent may apply for the technology transfer program.

(b) An eligible public or independent institution must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(c) An eligible public or independent institution must have adopted an intellectual property policy meeting the minimal standards set out in Texas Education Code, §51.680. A copy of the policy must be approved by the Commissioner and be on file at the Coordinating Board.

(d) An institution must show that it has external matching contributions from an industrial or private entity that intends to commercialize the technology in an amount equal to or greater than the amount of grant funds requested.

§14.53. Evaluation Criteria.

(a) Criteria for evaluating the proposals for the technology transfer program shall include potential importance of the technology, technical merit and soundness of the proposal, personnel and physical resources available to the project, and the quality of the product development and technology transfer plan.

(b) The proposals for the technology transfer program shall be reviewed to determine whether matching contributions from the industrial collaborator(s) meet the program guidelines.

(c) The Coordinating Board and the Advisory Committee may delete or add any relevant criteria for evaluating the proposals for the technology transfer program.

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

Filed with the Office of the Secretary of State, on November 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER E. PROCEDURAL ADMINISTRATION OF THE RESEARCH FUNDING PROGRAMS

19 TAC §§14.71 - 14.79

The Texas Higher Education Coordinating Board proposes new §§14.71 - 14.79, concerning the administration of the Advanced

Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Procedural Administration of the Research Funding Programs). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.71. Advisory Committee.

(a) The Advisory Committee shall consist of experts in the specified research areas.

(b) The Advisory Committee shall advise the Coordinating Board concerning the development of research priorities, guidelines, funding allocations, and procedures for the selection of specific projects for awards on a competitive, peer review basis.

(c) The Advisory Committee shall determine funding to be allocated to each research area.

(d) The Chairman of the Coordinating Board shall appoint members of the Advisory Committee, who shall serve for a term of three years. In making appointments the chairman shall include both representatives of Texas industry and Texas higher education.

§14.72. Pre-proposals and Proposal Solicitation.

(a) At least five weeks prior to the pre-proposal due date, the Coordinating Board shall issue a Program Announcement that describes key information about the research funding programs including investigator eligibility, pre-proposal and proposal formats, funding allocations, evaluation criteria, and schedules.

(b) Investigators who have failed to submit any required reports such as progress and final reports for previous research funding program grants shall not be eligible to submit pre-proposals or proposals to the research funding programs.

(c) Investigators who have knowingly submitted false information or engaged in misconduct in science, engineering, and education in previous research funding program grants shall not be eligible to submit pre-proposals or proposals to the research funding programs.

(d) Institutions shall submit their pre-proposals in the manner and format specified by the Coordinating Board with all requested information included.

(e) An institution applying for the technology transfer program shall provide in the pre-proposal a listing of external industrial or private support in an amount equal to or greater than the amount of grant funds requested from the technology transfer program.

(f) Each pre-proposal shall be evaluated by at least one reviewer with recognized expertise in the general subject area.

(g) Reviewers may, at their discretion, shift pre-proposals submitted under one research funding program to another, except that pre-proposals from independent institutions may not be moved into the research program.

(h) An institution submitting a pre-proposal accepted by the reviewers shall be invited to submit a full proposal that must expand upon the accepted pre-proposal.

(i) Any significant change in a proposal made from an original pre-proposal may be subject to restrictions imposed by the Coordinating Board.

§14.73. Proposal Evaluation.

(a) The full proposals that may be submitted shall be made in the manner and format specified by the Coordinating Board with all requested information included.

(b) Pursuant to Texas Education Code, §142.006 and §143.007, the Coordinating Board shall appoint as many review panels as necessary that consist of scientists and engineers with recognized expertise recruited from academic, government laboratories, non-profit research centers, and industries under the condition that employees of any institution of higher education in Texas shall not be reviewers.

(c) A review panel shall evaluate each proposal, and each review panel shall rank those proposals they consider eligible for funding and select those proposals to be funded.

(d) A review panel shall evaluate the budget for each ranked proposal and may recommend a budget that is different from that submitted by the participating institution(s).

(e) The Advisory Committee shall review the review panels' selections and then recommend the final list of proposals for funding to the Coordinating Board.

§14.74. Confidentiality.

(a) Any information either submitted by investigators or their institutions to the Coordinating Board or kept by the Coordinating Board related to the evaluation and selection of research projects to be funded by any of the research funding programs under this chapter shall be confidential unless released by the Coordinating Board pursuant to the following subsections of this section.

(b) The contents of pre-proposals and proposals submitted under the research funding programs shall be confidential. Reviewers shall be required to sign a confidentiality agreement prior to reviewing pre-proposals and proposals. No information shall be released to the general public on the content of unfunded proposals. Information released on funded proposals shall be limited to an overall statement of work approved by the affected institutions.

(c) Pre-proposals and proposals submitted by investigators or their institutions shall not be available to persons or entities other than the submitting investigators or their institutions at any time, except that the copies of the project summaries of awarded research project may be made available in a manner specified by the Coordinating Board.

(d) Reviews shall not be disclosed to persons or entities outside the Coordinating Board at any time, except that each individual investigator shall receive a copy of the reviews of his or her proposal with the names, affiliations, and any other identifying characteristics of the reviewers redacted.

(e) Only after the grant awards are complete, the names and affiliations of reviewers shall be released as a group without an identifying link to any grant application.

§14.75. Appeals Procedure for Declined Applicants.

(a) Only the chancellor or president of an eligible public or independent institution which retains a declined applicant for funds under any of the research funding programs may appeal a decision of declination to the Coordinating Board. Such an appeal must be made within 30 days after the date that the declination, including reviews, is made available to the applicant.

(b) The appealing claim should be in writing and should explain the specific reasons why the institution believes that the declination is unwarranted.

(c) The Chair of the Advisory Committee shall designate a panel consisting of at least three members to review appeals. The appeal panel will select its own chair. The appeal panel, in consultation with the original reviewers or members of the original peer review panel, shall determine whether the declination of the application was fair and reasonable, taking into account availability of funds, the rankings of other applications that have been recommended for continuation or funding in that research area, and the policies and priorities of the research funding programs and the Coordinating Board in addition to the reasons provided in the appealing claim.

(d) Within 30 days after the date of the appeal, the chair of the appeal panel shall provide in writing either the results of the determination as to the appeal claim or an explanation of the need for more time indicating the date when the results can be expected if results cannot be furnished within 30 days.

(e) The appeal panel shall make a recommendation to the Commissioner regarding the declination. The Commissioner shall inform the institution of the determination. If the appeal panel's decision overturns the declination, the Commissioner shall inform the institution of any deadlines regarding full proposal submission and review in the case of overturned pre-proposal declinations or the award amount and effective grant term in the case of overturned award declinations for full proposals.

(f) The decision made under this section is final.

§14.76. Funding and Grants.

(a) Funding for the research funding programs are subject to Texas Education Code, §142.004 and §143.005.

(b) Limitations on the number of awards that an individual investigator may receive will be recommended by the Advisory Committee and published in the Program Announcements.

(c) Budgets recommended by a review panel may be adjusted to comply with Program Announcements. Budgets recommended by a review panel for a proposal that is in line for funding but has not yet been funded may be decreased to allow award of any remaining funds in the final stages of the funding assignment process.

(d) The Coordinating Board staff shall assign funding to all proposals in order of rank by review panels and the Advisory Committee until the money assigned to that research area allocation is depleted. However, no more than 70 percent of the funds in each of the research program and the technology program may be awarded to eligible institutions from The University of Texas System and the Texas A&M University System.

(e) There is no upper limit to the percentage of funds that can be awarded to eligible institutions outside of The University of Texas System and the Texas A&M University System.

(f) The Advisory Committee shall recommend research projects and allocation of funds to the Commissioner and the Board of the Coordinating Board.

(g) The Coordinating Board shall make the final selection of research projects and allocation of funds after considering the recommendations of the Commissioner and the Advisory Committee.

(h) Prior to expenditure of funds for any grant, the institution must have an approved budget on file with the Coordinating Board.

(i) The Coordinating Board shall work with the Comptroller of Public Accounts to ensure that grants funds are forwarded to the institutions in a timely manner. Funds for the selected awards at public institutions will be held on account with the Comptroller. Funds for independent institutions will be forwarded by warrant in quarterly payments after a contract between the Coordinating Board and the institution is fully executed.

(j) An eligible institution and its grant participants to be funded by any of the research funding programs are subject to grant conditions provided by the Coordinating Board.

§14.77. Progress Reports.

(a) An institution funded by any of the research funding programs under this chapter shall report on the progress of the funded research to the Coordinating Board not later than the dates specified by the Coordinating Board.

(b) The due dates specified by the Coordinating Board for the progress reports are subject to Texas Education Code, §142.005 and §143.006.

(c) The progress reports shall be in the manner and format specified by the Coordinating Board and shall provide all requested information.

(d) The Coordinating Board shall report on the progress of active grants by annually posting information on the research funding programs' web site. Each year, the Coordinating Board shall notify the Governor and the Legislative Budget Board of the date and location of the posting.

§14.78. Merit Review.

(a) The Coordinating Board shall appoint an external evaluation committee to evaluate the effectiveness of the research funding programs in the second year of each biennium.

(b) The external evaluation committee shall consist of nationally or internationally recognized experts with experience in the physical sciences, engineering, medicine, and Texas industry.

(c) The committee will meet in Austin to discuss the research funding programs with representatives of the State government, institutional research offices, investigators, industry, the Advisory Committee, and the Coordinating Board research staff.

(d) The chair of the external review committee will present the committee's findings to the Coordinating Board.

§14.79. Suspension and Termination of Funding.

(a) A grant awarded under any of the research funding programs may be suspended or terminated in whole or in part after the

Coordinating Board's finding that a funded institution or its grant participant has failed to perform suitably or failed to conform to grant conditions.

(b) A grant awarded under any of the research funding programs may be suspended or terminated in whole or in part after the Coordinating Board's finding that a funded institution or its grant participant has made a false statement in information submitted to the Coordinating Board.

(c) A grant awarded under any of the research funding programs may be suspended or terminated in whole or in part after the Coordinating Board's finding that a funded institution or its grant participant has engaged in any misconduct in science, engineering, and education, such as falsification, fabrication, and plagiarism.

(d) A grant awarded to an institution under any of the research funding programs may be terminated in whole or in part if all of the original investigator(s) leave the institution. However, if the original investigator(s) moves to another eligible institution, any remaining grant funds may be transferred to the new institution if the participating institutions and the Coordinating Board staff agree to the transfer.

(e) The Coordinating Board may require reimbursement of grant funds in whole or in part if a grant is suspended or terminated under subsections (a) - (c) of this section.

(f) Funds not expended or encumbered for purposes of the grant during the term of the grant shall be returned to the Coordinating Board.

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

Filed with the Office of the Secretary of State, on November 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER F. SUPPLEMENTAL GRANTS PROGRAM FOR HIGH SCHOOL TEACHERS

19 TAC §§14.91 - 14.95

The Texas Higher Education Coordinating Board proposes new §§14.91 - 14.95, concerning the administration of the Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program (Supplemental Grants Program for High School Teachers). Specifically, these new rules describe the processes for the application and review of proposals, appeals by denied applicants, and suspension and termination of grants. Provisions regarding the confidentiality of information related to the application and review of proposals are also included in the new sections.

Dr. Linda Domelsmith, Director of Research has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Domelsmith has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be the enhanced development and growth of technology and related industries in Texas. This enhancement is expected from the increased number of qualified basic and technology research projects conducted at Texas institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the new rules may be submitted to Dr. Linda Domelsmith, P.O. Box 12788, Austin, Texas 78711, (512) 427-6150, or by e-mail to Linda.Domelsmith@thecb.state.tx.us.

The new rules are proposed under the Texas Education Code, §142.003 and §143.004 which provides the Coordinating Board with the authority to administer the Advanced Research Program and the Advanced Technology Program.

The new rules affect the Texas Education Code, Chapters 142 and 143.

§14.91. Purpose.

(a) The supplemental grants program is intended to provide research experiences to active science and mathematics teachers in Texas high schools.

(b) The supplemental grants program is established to enable such teachers to participate in existing research activities funded by the research program and the technology program under the mentorship of university scientists or engineers.

§14.92. Eligibility.

(a) Institutions and their investigators that are currently receiving award grants under either the research program or the technology program are eligible to participate in the supplemental grants program.

(b) Each investigator who must be present to mentor the teachers during the grant period may have no more than one active supplemental grant at any given time.

(c) Teachers supported under the supplemental grants program must have a standard certificate to teach science or mathematics and must have a signed statement from a high school principal indicating that the school intends to offer the teacher a contract to teach full-time at a Texas high school during the academic year subsequent to the grant period.

(d) Teachers supported under the supplemental grants program must be qualified to make positive contributions to the goals of the research projects and must work full-time on the project for the grant period.

(e) Teachers supported under the supplemental grants program are not required to be students at the institution receiving the supplemental grants.

§14.93. Application and Review Procedure.

(a) An application must be submitted in the manner and format specified by the Coordinating Board with all requested information included and attached.

(b) An application must be signed by the investigator and the teacher involved, and must be approved by responsible officials at the teacher's high school and the investigator's institution.

(c) The Coordinating Board shall review applications accepted during the period specified by the Coordinating Board in the order they are received.

(d) After review, the Coordinating Board will notify applying investigators within two weeks of its decision on applications.

§14.94. Grants and Grant Conditions.

(a) Grant amounts will be in addition to the original award amounts granted under the research program or the technology program.

(b) Grants will be awarded on a first-come, first-served basis.

(c) The term of the grant will be four to nine contiguous weeks as designated in applications during the summer period that shall be specified by the Coordinating Board.

(d) Dollar amounts of awards are tied to the length of the research period proposed.

(e) The Coordinating Board shall determine the grant amounts and their use.

(f) The Coordinating Board reserves the right to terminate any grants under the supplemental grants program at any time.

§14.95. Reporting Requirements.

(a) Principal investigators and teachers supported by the grants shall complete brief reports of activities conducted as a part of the research experience.

(b) Final expenditure reports from the institutions shall be required.

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

Filed with the Office of the Secretary of State, on November 7, 2002.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER E. TUITION EQUALIZATION GRANTS PROGRAM

19 TAC §21.132

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

The Texas Higher Education Coordinating Board proposes the repeal of §21.132, concerning affirmations for the Tuition Equalization Grant Program. Specifically, the repeal of this section will correct an error made in 1995, when state grant program rules were re-written and adopted as Chapter 22 of Board rules. This section of Chapter 21 was inadvertently left behind, although new rules governing the Tuition Equalization Grant Program were adopted as Subchapter B, Chapter 22.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is eliminated, there will be no fiscal implications to state or local government as a result of the repeal.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a uniform grant refund policy. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposed repeal of the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, or by e-mail to Lois.hollis@thecb.state.tx.us.

The repeal of the rule is proposed under the Texas Education Code, §61.229, which gives the Coordinating Board the authority to make any regulations consistent with the purposes and policies of the Program and to enforce its requirements, conditions, and limitations.

The repeal affects Texas Education Code, §61.229.

§21.132. Student Affirmation Form.

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 7, 2002.

TRD-200207302
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 30, 2003
For further information, please call: (512) 427-6162

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SUBCHAPTER G. TEXAS PUBLIC EDUCATIONAL GRANTS PROGRAM

19 TAC §21.182

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

The Texas Higher Education Coordinating Board proposes the repeal of §21.182, concerning affirmations for the Texas Public Educational Grant Program. Specifically, the repeal of this section will correct an error made in 1995, when state grant program rules were re-written and adopted as Chapter 22 of Board rules. This section of Chapter 21 was inadvertently left behind, although new rules governing the Texas Public Educational Grant program were adopted as Subchapter D, Chapter 22.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is eliminated, there will be no fiscal implications to state or local government as a result of the repeal.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be a uniform grant refund policy. There is no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposed repeal of the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, or by e-mail to Lois.hollis@thecb.state.tx.us.

The repeal of the rule is proposed under the Texas Education Code, §61.229, which gives the Coordinating Board the authority to make any regulations consistent with the purposes and policies of the Program and to enforce its requirements, conditions, and limitations.

The repeal affects Texas Education Code, §61.229.

§21.182. Student Affirmation Form.

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS FOR ALL GRANT AND SCHOLARSHIP PROGRAMS DESCRIBED IN THIS CHAPTER

19 TAC §22.6

The Texas Higher Education Coordinating Board proposes amendments to §22.6, concerning the general provisions for all grants and scholarships described in Chapter 22. Specifically, these amendments will make the general provisions applicable to all programs described in Chapter 22, rather than containing an exception for the Tuition Equalization Grant and the Scholarships for Professional Nursing Students.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a uniform grant refund policy. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the general authority to adopt rules to effectuate the provisions of the chapter; Texas Education Code, §61.229, which provides the Coordinating Board with the authority to make reasonable regulations to enforce the requirements, conditions, and limitations of the Tuition Equalization Grant; Texas Education Code, §56.034, which gives the Coordinating Board the implied authority to adopt regulations for the Texas Public Educational Grants; Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules necessary for the administration of the Scholarship Program for Professional Nursing and Vocational Nursing Students; Texas Education Code, §61.755, which provides the Coordinating Board with the authority to adopt rules necessary for the administration of the Scholarships for Fifth-Year Accounting Students; Texas Education Code, §56.303(a), which provides the Coordinating Board with the general authority to adopt rules to implement the provisions of the chapter; as well as Texas Education Code, §56.353(a), which provides the Coordinating Board with the general authority to adopt rules to implement the provisions of the chapter.

The amendments affect Texas Education Code, §§56.303, 56.353, 61.027, 61.229, 61.656, and 61.755.

§22.6. Awards and Adjustments.

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

(e) Refunds

(1) (No change.)

(2) Institutions [~~Except in the Tuition Equalization Grant Program and Scholarship Programs for Professional Nurses, which have their own refund schedules,~~ institutions] are to follow their general institutional refund policies in making refunds to the grant and scholarship programs described in this chapter.

(3) (No change.)

(f) - (h) (No change.)

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.25

The Texas Higher Education Coordinating Board proposes amendments to §22.25, concerning refunds for the Tuition Equalization Grant Program. Specifically, these amendments will make the refund provision consistent with the refund policies of the other grants administered by the Board and in accordance with the General Provisions of §22.6 of this title (relating to Awards and Adjustments).

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a uniform grant refund policy. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §61.221, which provides the Coordinating Board with the authority to administer Tuition Equalization Grants and Texas Education Code, §61.229, which gives the Coordinating Board the authority to make any regulations consistent with the purposes and policies of the Program and to enforce its requirements, conditions, and limitations.

The amendments affect Texas Education Code, §61.221 and §61.229.

§22.25. Refunds.

If a student withdraws officially for any reason refunds should be done in accordance with the general provisions of Chapter 22, Subchapter A, §22.6 of this title (relating to General Provisions for all Grant and Scholarship Programs Described in this Chapter). [If a student withdraws officially for any reason during the first week of class work, a refund of 70% of the tuition equalization grant will be returned to the board for reallocation; during the second week, 60%; during the third week, 40%; during the fourth week, 20%; during the fifth week and thereafter, nothing.]

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER E. TEXAS NEW HORIZONS SCHOLARSHIP PROGRAM

19 TAC §22.84

The Texas Higher Education Coordinating Board proposes amendments to §22.84, concerning selection of recipients for the Texas New Horizons Scholarship program. Specifically, these amendments will make the eligibility requirements reflect the legislative intent to phase out the Program, as evidenced by its repeal of the statutory basis for the Program, Texas Education Code, §54.216.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a clear statement of program eligibility requirements. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the programs under its administration.

The amendments affect no current statute since Texas Education Code, §54.216 has been repealed.

§22.84. Selection of Recipients.

Prior year recipients will continue to receive the scholarship as long as they continue to meet the eligibility requirements of the Texas New Horizons Scholarship Program. [In the initial selection of recipients, institutions are to give priority consideration to applicants who meet the criteria listed below. The Coordinating Board will advise institutions as to the relative weight to be given each of the criteria. In addition, priority may be given to prior year recipients as long as they continue to meet the eligibility requirements of the program. The selection criteria are:]

[(1) the applicant's socioeconomic background, which suggests disadvantages in preparing for college, measured in terms of the student's family income relative to the designated poverty level of income and whether or not the family has been receiving some type of welfare assistance;]

[(2) the relative wealth of the school district in which the student graduated from high school compared to the average wealth of school districts throughout the state;]

[(3) one or more of the following criteria, as determined by the institution attended by the student:]

[(A) levels of responsibility demonstrated by the student through work at school, in the community, the family or with an outside job to help support the family while attending high school, as attested to via recommendations from at least two disinterested third parties;]

[(B) the applicant's performance on standardized tests as compared to the performance of other students with similar socioeconomic backgrounds;]

[(C) whether the student's parents ever attended college; and,]

[(D) the applicant's performance on standardized tests compared to the performance of all applicants for an award under this subchapter.]

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

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General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER G. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR PROFESSIONAL NURSING STUDENTS

19 TAC §22.128

The Texas Higher Education Coordinating Board proposes amendments to §22.128, concerning refunds for the Scholarship Programs for Professional Nursing Students. Specifically, these amendments will make the refund provision consistent with the refund policies of the other grants administered by the Board and in accordance with the General Provisions of §22.6 of this title (relating to Awards and Adjustments).

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a uniform grant refund policy. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §61.652, which provides the Coordinating Board with the authority to administer funds for the Scholarship Programs for Professional Nursing Students as well as Texas Education Code, §61.656(b), which provides the Coordinating Board the authority to adopt rules relating to the establishment of the scholarship program.

The amendments affect Texas Education Code, §61.652 and §61.656.

§22.128. Refunds.

If a student withdraws officially for any reason, refunds should be done in accordance with the general provisions of Chapter 22, Subchapter A, §22.6 of this title (relating to General Provisions for all Grant and Scholarship Programs Described in this Chapter). [~~In any semester, should a student withdraw from classes prior to the end of the term, funds disbursed to the student from the scholarship program that semester or term shall be returned to the program in accordance with the following schedule:~~]

[~~(1) Prior to the first class day--100%;~~]

[~~(2) During the first five days of class--80%;~~]

[~~(3) During the second five days of class--70%;~~]

[~~(4) During the third five days of class--50%;~~]

[~~(5) During the fourth five days of class--25%;~~]

[~~(6) After the fourth five days of class--0%.~~]

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

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SUBCHAPTER J. PROVISIONS FOR THE TEXAS TUITION ASSISTANCE GRANT PROGRAM

19 TAC §22.183

The Texas Higher Education Coordinating Board proposes amendments to §22.183, concerning the eligible students provisions for the Texas Tuition Assistance Grant Program. Specifically, these amendments will make the eligibility requirements reflect the legislative intent to phase out the Program, as evidenced by its repeal of the statutory basis for the Program, Texas Education Code, §§56.101 - 56.108.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of administering the rule will be a clear statement of program eligibility requirements. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rule are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the programs under its administration.

The amendments affect no current statute since Texas Education Code, §§56.101 - 56.108 have been repealed.

§22.183. Eligible Students.

[~~(a) Initial award recipients must:~~]

[~~(1) meet general eligibility requirements of this chapter; and~~]

[~~(2) be enrolled on a full-time basis in an eligible institution;~~]

[~~(3) be from a low-income or middle-income family;~~]

[~~(4) have graduated from a secondary school within two years preceding the student's grant application;~~]

[~~(5) have a cumulative secondary school grade point average that is equal to or greater than the equivalent of 80 on a scale of 100;~~]

[~~(6) have applied for any available financial aid;~~]

[~~(7) not have been granted a baccalaureate degree; or~~]

[~~(8) not have been convicted of a felony or a crime involving moral turpitude, unless the person has met all initial award eligibility requirements and has:~~]

[~~(A) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or~~]

[~~(B) been pardoned or otherwise released from the resulting ineligibility to participate in the Texas Tuition Assistance Grant Program.~~]

[~~(b)~~] Continuation award recipients must

(1) make steady academic progress toward a baccalaureate degree as determined by the institution;

(2) maintain full-time enrollment for at least two semesters in any academic year;

(3) have a cumulative grade point average of at least 2.5 on a 4.0 scale; [~~and~~]

(4) have applied for financial aid; and

(5) [~~(4)~~] meet all the general eligibility requirements of this chapter [~~for students receiving initial awards as listed in §22.183 of this title (relating to Provisions for the Texas Tuition Assistance Grant Program)~~].

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER K. PROVISIONS FOR THE TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.201 - 22.205

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

The Texas Higher Education Coordinating Board proposes the repeal of §§22.201 - 22.205, concerning the Texas Educational Opportunity Grant Program. Specifically, the repeal of these rules will make the rules consistent with the actual and current statutory status of the program, since the Legislature has repealed this grant program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rules are eliminated, there will be no fiscal implications to state or local government as a result of the repeal.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal of the rules will be to eliminate confusion about the current status of the program. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the rules as proposed. There is no impact on local employment.

Comments on the proposed repeal of the rules may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, or by e-mail to Lois.hollis@thecb.state.tx.us.

The repeal of the rules is proposed under the Texas Education Code, §61.027, the Coordinating Board's general rulemaking authority that grants the power to make rules that effectuate the provisions of the chapter.

The repeal of these rules will have no statutory affect, as this program has been repealed.

§22.201. Purpose.

§22.202. Eligible Institutions.

§22.203. Eligible Students.

§22.204. Award Amounts.

§22.205. Allocations and Reallocations.

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

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General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226, 22.228, 22.229, 22.232

The Texas Higher Education Coordinating Board proposes amendments to §§22.226, 22.228, 22.229, and 22.232, concerning the definitions, student eligibility requirements, hardship provisions and awards and adjustments for the Toward Excellence, Access and Success Grant Program. Specifically, these amendments will clarify information needed on the report

submitted to the Board regarding encumbering funds, remove references to the Teach for Texas Conditional Grant, clarify that a student must be enrolled in an undergraduate degree or certificate program, clarify if a student graduates from a private high school that the high school must be accredited by the Texas Education Agency, clarify that a student must enroll in higher education within 16 months of high school graduation, and clarify requirements for receiving an award through the program.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the rules will be clarification of program requirements. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6505, or by e-mail to Lois.hollis@thecb.state.tx.us.

The amendments to the rules are proposed under the Texas Education Code, §56.302, which provides the Coordinating Board with the authority to provide a grant of money to enable eligible students to attend public and private institutions of higher education in this state.

The amendments affect the Texas Education Code, Chapter 56, Subchapter M.

§22.226. Definitions.

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

(1) Encumber funds (for the TEXAS Grant Program)--To commit specific award amounts to specific students, documented by a report submitted to the Board, which includes at a minimum, the number of students to receive funds and the total amount to be issued to them [~~a list of student recipient social security numbers, number of hours taken and dollar amounts awarded~~].

(2) - (3) (No change.)

[~~(4) Fifth-year certification student--A student at an approved institution enrolled in a fifth-year educator program.~~]

(4) [~~(5)~~] Initial award--The grant award made in the first semester in which a student is eligible.

(5) [~~(6)~~] Recommended or advanced high school curriculum--The curriculum specified in the Texas Education Code, §28.002 or §28.025.

§22.228. Eligible Students.

(a) To receive an initial award through the TEXAS Grant Program, a student must:

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

(5) be enrolled in an undergraduate degree or certificate program and not have been granted a baccalaureate degree;

(6) (No change.)

(7) if a graduate of a public high school certified by its district [~~in a school district certified~~] not to offer all the courses necessary to complete all parts of the recommended or advanced high school curriculum, have completed all courses at the high school offered toward the completion of such a curriculum and enroll in an eligible institution not later than the end of the 16th month after the month of high school graduation (unless granted a hardship extension in keeping with §22.229 of this title); and

(8) if a graduate of a [~~an accredited~~] private high school, graduate from a high school identified by the Texas Education Agency as accredited so the high school transcript can be accepted as equivalent to the recommended or higher curriculum offered by public high schools. [~~present an official transcript or diploma that includes information indicating that the student has completed or is on schedule to complete the equivalent of the recommended or advanced high school curriculum.~~]

(b) To receive a continuation award through the TEXAS Grant Program, a student must:

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

(4) be enrolled in an undergraduate degree or certificate program at an eligible institution [~~unless enrolled as a fifth-year certification student in a five-year educator certification program and receiving a Teach for Texas Grant as provided in Chapter 21, Subchapter N of this title (relating to Teach for Texas Conditional Grant Program)~~];

(5) - (8) (No change.)

(c) Unless granted a hardship postponement in keeping accordance §22.229(c) of this title (relating to Hardship Provisions), a student's eligibility for a TEXAS grant ends six years from the start of the semester or term in which the student received his or her initial award of a TEXAS grant if the student's eligibility for a TEXAS Grant was based on his or her high school performance. Unless granted a hardship postponement in accordance with §22.229(c) of this title [~~(relating to Hardship Provisions)~~], a student's eligibility ends four years from the date [~~start~~] of the semester or term in which the student received his or her initial award of a TEXAS grant if the student's eligibility was based on receiving an associate's degree.

(d) - (e) (No change.)

§22.229. Hardship Provisions.

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

(d) A student must enroll in higher education [~~student's first award must be received~~] within 16 months of high school graduation. However, the financial aid director may allow a student to receive his/her first award after more than 16 months have passed if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest. Documentation justifying the exception must be kept in the student's files.

§22.232. Awards and Adjustments.

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

(d) Amount of Grant.

(1) The maximum amount that may be received in a given semester or term by a student through the TEXAS Grant Program is an amount equal to the average tuition and required fees charged students enrolled in similar institutions for the statewide average full-time load for financial aid recipients [~~12 semester credit hours or their equivalent~~]. The maximum award for recipients enrolled at eligible private or independent institutions is based on the average tuition and required

fees at public universities. The maximum award for students enrolled in public community colleges is based on the average in-district tuition and fee charges for such institutions. The Board shall determine and announce award maximum amounts prior to the start of each fiscal year.

(2) - (3) (No change.)

(e) (No change.)

(f) Packaging with Other Awards. The amount of a TEXAS grant may not be reduced by any gift aid for which the person is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's financial need [~~total cost of attendance at an eligible institution~~].

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

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL REQUIREMENTS APPLICABLE TO ALL CERTIFICATES ISSUED

SUBCHAPTER R. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.851

The State Board for Educator Certification (SBEC) proposes an amendment to §232.851, relating to the number of required continuing professional education hours by classes of certificates. The proposed amendment to §232.851 would require holders of the new standard reading specialist certificate (proposed elsewhere in this same issue) to complete 200 hours of continuing professional education every five years in order to renew the certificate. This renewal requirement is consistent with the requirements for other student services certificates (e.g., school counselor, educational diagnostician).

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined that, for the first five-year period the rules are in effect, enforcing or administering the proposed rule would not have foreseeable implications relating to cost or revenues of state or local governments.

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 benefits expected as a result of adoption of the proposed rule will be to ensure school administrators and students and their parents that holders of the standard reading specialist certificate continually update their knowledge of current best practices based on scientifically based research and best available technology to enhance their roles in providing reading learning services. Holders of the standard reading specialist certificate may incur costs in obtaining appropriate continuing professional education not provided through districts as part of their regular professional development program. There will be no affect 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 renewal of an educator certificate, a statutory privilege, issued by 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 amendments 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 the following Education Code sections: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; and §21.041(b)(9), which requires SBEC to provide for continuing education requirements.

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

§232.851. Number of Required Continuing Professional Education Hours by Classes of Certificates.

(a) Holders of the Standard Superintendent Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §242.30 of this title (relating to Requirements for Continuing Education and the Renewal of the Standard Superintendent Certificate).

(b) Holders of the Standard Principal Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(c) Holders of the Standard School Counselor Certificate must complete 200 clock hours of continuing professional education every five years.

(d) Holders of the Standard Learning Resources Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(e) Holders of the Standard Educational Diagnostician Certificate must complete 200 clock hours of continuing professional education every five years.

(f) Holders of the Standard Reading Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(g) [~~(f)~~] Holders of the Standard Master Teacher Certificate must complete 200 clock hours of continuing professional education every five years.

(h) [~~(g)~~] Holders of the Standard Classroom Teacher Certificate must complete 150 clock hours of continuing professional education every five years. Specific requirements are contained in §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours).

(i) [~~(h)~~] Holders of the Standard Educational Aide Certificate are exempt from the provisions of §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours).

(j) [~~(i)~~] Holders of Professional Certificates issued prior to September 1, 1999, who opt in to the Standard Certificate pursuant to §232.810 of this chapter (relating to Voluntary Renewal of Current Texas Educators) must complete 200 clock hours of continuing professional education every five years.

(k) [~~(j)~~] Holders of Provisional Certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.810 of this chapter must complete 150 clock hours of continuing professional education every five years.

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 7, 2002.

TRD-200207259
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 469-3011

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CHAPTER 239. STUDENT SERVICES CERTIFICATES

SUBCHAPTER D. READING SPECIALIST CERTIFICATE

19 TAC §§239.90 - 239.95

The State Board for Educator Certification (SBEC) proposes new Subchapter D, related to the reading specialist certificate, of 19 TAC Chapter 239, related to student services certificates. The following new sections are proposed: §239.90, related to general provisions for issuance of the reading specialist certificate; §239.91, related to minimum requirements for admission to a reading specialist preparation program; §239.92, related to preparation requirements; §239.93, related to requirements for the issuance of the reading specialist certificate; §239.94, related to requirements to renew the standard reading specialist certificate; and §239.95, related to transition and implementation dates.

The proposed experience requirements for the new standards-based Reading Specialist Certificate are consistent with those for the other new student services certificates (school librarian, school counselor, and educational diagnostician). They differ, however, from the current Reading Specialist requirements in that the proposed rules require two years of classroom teaching experience in a public or accredited private school.

Proposed new §239.95, related to transition and implementation dates, provides for the new reading specialist certificate to be offered beginning September 1, 2003, and provides for the current reading specialist certificate to be discontinued effective September 1, 2004. The Examination for the Certification of Educators in Texas (ExCET) reading specialist test is scheduled for deletion on August 31, 2003, and the new Texas Examination of Educator Standards (TExES) reading specialist test has been available since September 1, 2003. Under the proposed rule, candidates who have passed the reading specialist ExCET prior to September 1, 2003, will have until August 31, 2004, to meet all other requirements for the current (ExCET-based) reading specialist certificate issued under 19 TAC §230.310. That is, candidates who have passed the reading specialist ExCET before September 1, 2003, but who have not acquired the required three years of teaching experience or have not completed required coursework will have an additional year to meet these requirements.

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined that, for the first five-year period the rules are in effect, enforcing or administering the proposed rule would not have foreseeable implications relating to cost or revenues of state or local governments.

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 benefits expected as a result of adoption of the proposed rules will be to ensure that certified reading specialists meet current professional standards founded on scientifically based research. Implementation of the proposed rules will not affect 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 renewal of an educator certificate, a statutory privilege, issued by 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 new rules 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 new rules are proposed under the statutory authority of the following Education Code sections: §21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which

requires SBEC to specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; and §21.048, which requires SBEC to propose rules prescribing comprehensive examinations for the reading specialist certificate.

Because the proposed rules change the requirements for obtaining the reading specialist certificate, they indirectly affect §21.0481, Education Code, which provides special eligibility conditions for holders of the reading specialist certificate seeking the master reading teacher certificate. No other statutes, articles, or codes are affected by the proposed new rules.

§239.90. General Provisions.

(a) Because the reading specialist plays a critical role in campus effectiveness and student achievement, the State Board for Educator Certification adopts the rules in this subchapter to ensure that each candidate for the reading specialist certificate is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Each individual serving as a reading specialist is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

§239.91. Minimum Requirements for Admission to a Reading Specialist Preparation Program.

(a) Prior to admission to a preparation program leading to the Standard Reading Specialist Certificate, an individual must:

(1) hold a baccalaureate degree from an accredited institution of higher education; and

(2) meet the requirements for admission to an educator preparation program under Chapter 227 of this title (relating to Provisions for Educator Preparation Students).

(b) Preparation programs may adopt requirements for admission in addition to those required in subsection (a) of this section.

§239.92. Preparation Requirements.

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in the State Board for Educator Certification-approved Standards for Reading Specialist to include experiences at diverse types of campuses.

(b) Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute professional reading specialist training or experience directly related to the standards identified in subsection (a) of this section for part of the preparation coursework or other program requirements.

§239.93. Requirements for the Issuance of the Reading Specialist Certificate.

To be eligible to receive the Standard Reading Specialist Certificate under this subchapter, the individual must:

(1) successfully complete a reading specialist preparation program that meets the requirements of §239.92 of this title (relating to Preparation Requirements) of this subchapter;

(2) successfully complete the assessments required under this title;

(3) hold a master's degree from an accredited institution of higher education; and

(4) have two school years of classroom teaching experience in a public or accredited private school.

§239.94. Requirements to Renew the Standard Reading Specialist Certificate.

(a) Each individual issued a Standard Reading Specialist Certificate under this title is subject to Chapter 232, Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

(b) An individual who holds a valid Texas reading specialist certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures adopted by the executive director under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

§239.95. Transition and Implementation Dates.

Section 239.93 of this title (relating to Requirements for the Issuance of the Standard Reading Specialist Certificate) shall be implemented on September 1, 2003, and shall supersede all conflicting provisions in this title on September 1, 2004. All other sections of this subchapter shall take effect pursuant to Texas Government Code, §2001.036, relating to Effective Date of Rules.

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

Filed with the Office of the Secretary of State on November 7, 2002.

TRD-200207260
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.9

The State Board of Dental Examiners proposes amendments to §101.9, Dental Profiles. Rule 101.9 provides that all applicants for renewal of dental licenses must include specific data on a form provided by the State Board of Dental Examiners and must do so by January 1, 2003. Senate Bill 187, 77th Legislature provides that a licensing entity shall establish a profile system and shall make this information available to the public not late than January 1, 2005. The State Board of Dental Examiners proposes to amend the effective date of this rule to begin gathering profile data January 1, 2004.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be limited fiscal implications for local or state government as a result of enforcing or administering the rule.

There is an anticipated economic cost to persons who are required to comply with the amended section. There is no anticipated local employment impact as a result of enforcing this amended section.

Dr. Bolton has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be access by the public to licensees' information which will be uniform.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses. The requirement under §101.9 will impact individuals who make application for renewal and not small businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, Senate Bill 187, §11, 77th Legislature, 2001, which requires the Board to adopt rules to establish a profile system.

The proposed amended rule does not affect other statutes, articles, or codes.

§101.9. Dental Profiles.

(a) Beginning January 1, 2004 [~~2003~~], all applications for renewals of dental licenses, on a form provided by the State Board of Dental Examiners, must include data to be used to provide to the public a "profile" for each licensed dentist. The profile data form is part of the renewal application and must be completed and all fees paid before the agency will process the renewal application.

(b) When a renewal application is returned to an applicant because it is incomplete or fees are not paid, and the corrected application is received after the applicant's license has expired, statutory penalties, as set forth will be assessed and collected before the license is renewed.

(c) Dentists' profile data to be collected and made available to the public includes the following for each dentist:

(1) Name of license holder;

(2) Primary practice location address or a statement that the dentist does not practice dentistry;

(3) Telephone number at the primary practice location;

(4) Whether patient areas are accessible to disabled persons in compliance with the Americans With Disabilities Act (AwDA);

(5) Whether the dentist accepts insurance;

(6) Whether the dentist is a Medicaid provider;

(7) Whether the dentist provides care under the Children's Health Insurance Program (CHIP) or other state program;

(8) The dental degree held by applicant and the school that conferred it;

(9) Specialty certifications held, if any;

(10) The number of years the dentist has practiced;

(11) Any hospital affiliation(s);

(12) Language translating services available, if any; and

(13) Whether translating services are available for patients with impairment of hearing.

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

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TRD-200207331
Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 463-6400

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.100

The State Board of Dental Examiners proposes amendments to §107.100, concerning the receipt, processing and coordination of complaints filed by patients, and/or other members of the general public or dental professions against Texas dentists and dental hygienists and/or dental laboratory registrants.

Recommendation 3.8 of the Sunset Advisory Commission's report requires the Board to adopt rules that allow for the acceptance of anonymous complaints and communicate that policy to the public. The Board agrees with that recommendation and has amended §107.101 by adding language at new subsection (c) to clarify that the term complaints includes anonymous written complaints.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Dr. Bolton has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be established procedures for the receipt and processing of all complaints, including anonymous written complaints.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses, as

the cost of compliance, if any, will be minimal. There is no anticipated economic costs to individuals required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and §255.006 which provides that the SBDE shall adopt rules concerning filing complaints.

The proposed amended rule does not affect other statutes, articles, or codes.

§107.100. Receipt, Processing, and Coordination of Complaints

(a) The Enforcement Division of the State Board of Dental Examiners, under supervision of the Director of Enforcement, shall have primary responsibility for the receipt, processing, and assignment of complaints filed by patients and/or other members of the general public or dental profession against Texas dentists and dental hygienists and/or dental laboratory registrants. All complaints shall be processed, coordinated, and investigated with the coordination of the Board Secretary or his/her designee. All complaints and investigations shall follow the prescribed and mandated procedures as detailed in the Occupations Code, Chapter 255.

(b) In order to insure that all complaints received are accounted for and follow the prescribed protocols, a complaint/investigative procedure shall be established and utilized.

(c) The term complaints includes anonymous written complaints.

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

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Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §107.102

The State Board of Dental Examiners proposes amendments to §107.102, concerning procedures in conduct of investigations. The Board proposes amendments to §107.102 at subsections (f) (g), (h), (i) and (j) to clarify the rule language regarding the handling of dismissals and to streamline the complaint review process.

The Board amends the language subsection (g) to clarify that a case dismissed by the Board Secretary or designee shall be reviewed by at least two members of the Enforcement Committee. Proposed language at subsection (h) provides that if a complaint is dismissed the Board shall notify the complainant within ten days from the date of the Board action thereby allowing the complainant the right to appeal the dismissal.

Recommendation 3.9 of the Sunset Advisory Commission's report recommends that the Board adopt rules that specify a reasonable time frame for the PEC to review those dismissed complaints on the request of the complaint. The SBDE agrees with that recommendation and has amended §107.102 by adding new subsection (i) to ensure that dismissed complaints that are to be reconsidered by the SBDE's Professional Evaluation Committee (PEC) at the request of the complainant are done so in a reasonable time frame.

Amendments to subsection (f) and new subsection (j) provide clarification of the complaint process in general.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be no impact for local government. The impact to state government will be $7200 per fiscal year over the next five year period as a result of scheduling twelve Professional Evaluation Committee meetings to review cases that are recommended for dismissal.

Dr. Bolton has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the public will understand the rights and responsibilities of the parties of a complaint alleging a violation of the Dental Practice Act.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses, as the cost of compliance, if any, will be minimal. There is no anticipated economic costs to individuals required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties and §255.006 which provides that the SBDE shall adopt rules concerning disposition of complaints.

The proposed amended rule does not affect other statutes, articles, or codes.

§107.102. Procedures in Conduct of Investigation.

(a) An investigative file accounting for each complaint filed with the Board shall be maintained under the supervision of the Director of Enforcement.

(b) Every complaint shall be reviewed by the Director of Enforcement to determine jurisdiction. If jurisdiction exists, a complaint

shall be investigated to determine the facts concerning the complaint. All investigators shall be state employees.

(c) If, upon initial review, the complaint reveals a possible threat to a person's welfare, the complaint shall be referred to the Board or an executive committee of the Board, for consideration of temporary suspension, pursuant to the Occupations Code, Chapter 263, Section 263.004.

(d) During the course of an investigation, the complainant shall be given an opportunity to explain or comment on the allegations made in the complaint. At the initiation of the investigation, the respondent shall be provided a copy of the complaint to facilitate a response, unless to do so would jeopardize an undercover investigation.

(e) The parties to the complaint shall receive notice of the status of the complaint, at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an undercover investigation.

(f) Upon completion of an investigation by the Enforcement staff, [~~Upon completion,~~] the Board Secretary or designee shall review the investigative file. The Secretary , or designee may: dismiss the case; refer the case to the State Office of Administrative Hearing; refer the case to an informal settlement conference for the proposal of an agreed settlement order imposing sanction(s); [~~conference; refer the case to the Executive Director or a subcommittee of the Board for imposition of an administrative penalty;~~] direct further investigation, or other appropriate action or consideration in accordance with Board rules, or refer it to the Professional Evaluation Committee.

(g) If the Board Secretary or designee dismisses a case, he or she shall state, with specificity, the reason or reasons for the dismissal. A case dismissed by the Board Secretary or designee shall be reviewed by at least two members of the Enforcement Committee. If one reviewing member of the Enforcement Committee does not agree with the Board Secretary or designee's decision to dismiss the case, that case shall be forwarded to the Professional Evaluation Committee for consideration. If both reviewing members of the Enforcement Committee agree with the Board Secretary or designee's decision to dismiss the case, the dismissal shall be final. [~~The Professional Evaluation Committee shall consist of three board members appointed by the President of the Board, one of whom must be a public member. Complaints referred to the Professional Evaluation Committee by the Secretary or designee may be dismissed, referred to Settlement Conference, returned for further investigation or the Professional Evaluation Committee may propose an agreed board order imposing sanctions.~~]

~~[(1) Meetings of the Professional Evaluation Committee are open meetings as defined by the Open Meetings Act;]~~

~~[(2) Only Professional Evaluation Committee members and SBDE staff may participate in discussions concerning any complaint. The members may review and consider all information in the investigative file;]~~

~~[(3) An offer of settlement by agreed order must include a statement that the respondent should not agree to the order if he/she wants to explain any part of his/her conduct in connection with the complaint.]~~

(h) All jurisdictional cases shall be investigated. No case will be dismissed without appropriate consideration. If a complaint is dismissed, the Board shall notify the complainant within ten days of the date of the Board action. The notice of dismissal must be in writing, include the reason(s) for the dismissal and inform the complainant of the right to appeal the dismissal. An appeal under this section shall be considered a request for reconsideration of the dismissed case. [~~A letter shall be sent to the complainant, explaining why the case was dismissed. If the complainant objects to closure and provides new information to support the allegations, or shows that reasons given for the dismissal do not adequately address the allegations the case shall be reviewed by the Professional Evaluation Committee to determine whether further action is appropriate, except that cases dismissed by the Professional Evaluation Committee shall be reviewed by at least three members of the Enforcement Committee.~~]

(i) The Board may hear an appeal in a dismissed case only if:

(1) New information or evidence is presented, the acceptance of such, if taken as true supports the original complaint(s);

(2) The complainant must, in writing, request reconsideration of a dismissed case postmarked no later than twenty days from the date of receipt of the Board's dismissal letter. The complainant(s) is presumed to be in receipt of the dismissal letter on the third day after the date on which the dismissal letter is mailed.

(3) A request for reconsideration of a dismissed case(s) shall not be considered by the Board unless it is timely submitted.

(4) A request for reconsideration must contain the requirements specified in this subsection. For purposes of this section, a complainant is deemed to have received the dismissal letter three days from the date of mailing by the Board.

(5) Requests meeting this subsection shall be heard by the Professional Evaluation Committee no later than sixty days after the date the Board receives the request from the complainant requesting reconsideration. This time frame may be extended upon good cause shown by the Board. If the time for reconsideration occurs after this sixty day period, the Board shall notify the complainant(s) in writing.

(6) This subsection does not apply to cases dismissed by the full Board by recommendation from an Informal Settlement Conference panel. All cases dismissed by the full Board may be appealed in accordance with the Government Code.

(j) The Professional Evaluation Committee shall consist of three board members appointed by the President of the Board, one of whom must be a public member. Complaints referred to the Professional Evaluation Committee by the Secretary or designee may be dismissed, referred to an informal settlement conference or returned for further investigation. The Professional Evaluation Committee may also propose an agreed Board Order imposing sanctions. All Board Orders proposed by the Professional Evaluation Committee shall include a statement that the Respondent should not agree to the Order if he or she wants to explain any part of his or her conduct in connection with the complaint.

(1) Meetings of the Professional Evaluation Committee are open meetings as defined by the Open Meetings Act;

(2) Only Professional Evaluation Committee members and SBDE staff may participate in discussions concerning any complaint. The members may review and consider all information in the investigative file.

(3) All cases heard by the Professional Evaluation Committee involving reconsideration of an earlier dismissal by the Board are final.

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 7, 2002.

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Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 463-6400

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SUBCHAPTER C. ADMINISTRATIVE PENALTIES

22 TAC §107.200

(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 State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Board of Dental Examiners proposes the repeal of §107.200, concerning administrative penalty as language of the rule is now obsolete and irrelevant. Language at subsection (a) which makes reference to §107.201 concerning administrative penalties for failure to comply with continuing education requirements is now obsolete as §107.201 was repealed in 2000. Language at subsection (c) is obsolete as violation categories were reclassified in §107.101 (of this title relating to Guidelines for the Conduct of Investigations).

New language defining circumstances under which an administrative penalty may be imposed as well as criteria for determining the amount of penalty can now be found in new proposed §107.202, Disciplinary Guidelines and Administrative Penalty Schedule.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the repealed rule is in effect there will be no fiscal implications for local or state government as a result of the proposed repeal.

Dr. Bolton has determined that for each year of the first five years the repealed rule is in effect, the public benefit anticipated as a result of repealing the rule will be a clarification of the agency's rules regarding disciplinary guidelines and administrative penalties by replacement with proposed new §107.202.

There will be no fiscal implications for small businesses or large businesses as a result of the proposed repeal. There is no anticipated economic costs to individuals required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

Rule 107.200 is proposed for repeal under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed repeal of §107.200 does not affect other statutes, articles, or codes.

§107.200. Administrative Penalty.

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

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Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §107.202

The State Board of Dental Examiners proposes new §107.202, Disciplinary Guidelines and Administrative Penalty Schedule, which defines the circumstances under which an administrative penalty may be imposed on a licensee or registrant for violations of the Dental Practice Act and rules of the Board.

The State Auditor's Office conducted an internal and financial audit of the State Board of Dental Examiners, April 2002. The State Auditor's Office in its June 5, 2002 report cited that "the Board's inconsistent application of rules and policies and flawed investigation process severely weaken its oversight of dental professionals." At Chapter 1.1, Failure to Enforce Criteria Impairs Consistency it was noted "...while the Board adopted specific guidelines for sanctions in 2001, these guidelines are not codified in the Texas Administrative Code." The State Auditor's Office recommended that the Board codify in the Texas Administrative Code suggested sanctions they may levy against license holders or unlicensed individuals for specific infractions. The SBDE agrees with this recommendation and proposes new §107.202 that sets forth disciplinary guidelines and administrative penalties.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the new rule is in effect there will be no fiscal implications for local government. There will be an impact on state government as this new rule will generate revenue for the state. However, the revenue generated will be contingent upon how many administrative penalties are imposed on licensees who violate the Dental Practice Act.

Dr. Bolton has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that public safety will be enhanced because licensees and registrants assessed administrative penalties will also be assessed board orders which will be public knowledge.

There will be no effect on small or large businesses. The anticipated economic costs to persons who are required to comply with the rule as proposed will be contingent upon the administrative penalty assessed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The new rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, §264.001 which provides the SBDE with the authority to impose an administrative penalty, and §263.002 which provides grounds for disciplinary action in general.

The proposed new rule does not affect other statutes, articles, or codes.

§107.202. Disciplinary Guidelines and Administrative Penalty Schedule .

(a) Procedures and amount(s) for administrative penalties portrayed in this rule may be imposed on a licensee or registrant for violation(s) of the Dental Practice Act and/or Board rules and regulations.

(b) Upon review of the completed investigation file, the Executive Director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of penalty imposed based on a standardized penalty schedule and based on the following criteria:

(1) The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations:

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; or

(6) any other matter the justice may require.

(c) The amount of the administrative penalty may not exceed $5000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(d) Administrative penalties may be imposed for the following violation categories as set forth in Rule 107.101 of this title (relating to Guidelines for the Conduct of Investigations) and the amount of penalty imposed shall be in accordance with this schedule as set forth:

(1) Quality of Care violations may include, but are not limited to:

(A) Failure to treat a patient according to the standard of care in work performed in the practice of dentistry or dental hygiene;

(B) Failure to safeguard patient against avoidable infections;

(C) Misleading dental patient as to the gravity, or lack thereof, of such patient's dental needs;

(D) Failure to advise patient in advance of beginning treatment;

(E) Abandonment of patient;

(F) Negligence in treatment, which results in severe or very serious patient injury;

(G) Negligence in treatment, which results in patient death. The administrative penalty to be determined by the Board;

(H) Failure to report patient death or injury requiring hospitalization; or

(I) Failure to make, maintain and keep adequate dental records.

(J) The amount of penalty that may be imposed on Quality of Care violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

(2) Sanitation violations may include, but are not limited to:

(A) Failure to maintain the dental office in a sanitary condition; or

(B) Failure to maintain the dental laboratory in a sanitary condition.

(C) The amount of penalty that may be imposed on Sanitation violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

(3) Professional Conduct violations may include, but are not limited to:

(A) Failure to conduct practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(B) Failure to maintain a centralized inventory of drugs;

(C) Dispensing, administering or distributing drugs for other than dental purposes;

(D) Failure to record the dispensing, administering, or prescribing of narcotic drugs, dangerous drugs, or controlled substances to or for a dental patient in the patient's dental records;

(E) Fraudulently obtaining permits or certifications as may be required by the Board;

(F) Obtaining a fee by fraud or misrepresentation;

(G) Impairment due to addiction or excessive habitual use of alcohol or other drugs;

(H) Impairment due to continuing addiction or excessive habitual use of alcohol or other drugs while under Board order;

(I) Physically or mentally incapable of practicing in a safe manner;

(J) Delegation of surgical cutting procedure on hard or soft tissue to a non-dentist;

(K) Allowing a dental assistant to perform acts or procedures that are not reversible;

(L) Allowing an un-registered person to perform radiologic procedures;

(M) Delegation of duties to a dental hygienist who is not licensed to perform the function; and

(N) Failure to make dental records available to the Board in a timely manner upon demand.

(O) The amount of penalty that may be imposed on Professional Conduct violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000, and/or participation in the Texas Dental Peer Assistance program, if applicable, and/or suspension to revocation;

(ii) second offense may be up to, but not greater than $4000, and/or participation in the Texas Dental Peer Assistance program, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or participation in the Texas Dental Peer Assistance program, and/or suspension to revocation.

(4) Professional Conduct violations as they relate to the practice of dental hygiene may include, but are not limited to:

(A) Diagnosing a dental disease, prescribing medication, performing a procedure which is irreversible or which involves the intentional cutting of hard or soft tissue;

(B) Practicing dental hygiene outside of the dental office of a supervising dentist, or in an alternative setting, while not under the supervision of a dentist; or

(C) Applying pit and fissure sealants or site specific subgingival medicaments while outside the dental office of the employer and not under the general supervision or direction of a dentist.

(D) The amount of penalty that may be imposed on Professional Conduct violations as they relate to the practice of dental hygiene may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000, and/or suspension to revocation;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

(5) Administration violations may include, but are not limited to:

(A) Failure to follow the administrative requirements of the Dental Practice Act and the Board's rules;

(B) Participation in a scheme to evade the provisions of the Dental Practice Act and the Board's rules;

(C) Circumventing the provisions of the Dental Practice Act and the Board's rules;

(D) Permitting unlicensed persons to practice in the dental office; or

(E) Knowingly provide dental care in a manner which violates federal or state law regulating insurance.

(F) The amount of penalty that may be imposed on Administration violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

(6) Dental Laboratory violations may include, but are not limited to:

(A) Failure to comply with the requirements for registration of a commercial dental laboratory;

(B) Failure to obtain written work order(s) or prescription(s) from a licensed dentist, containing signature and dental license number, date of signature, name and address of patient, and description of kind and type of act, service or material ordered;

(C) Failure to keep premises and records open to inspection during working hours; or

(D) Failure to comply with the requirements for notification of change of ownership.

(E) The amount of penalty that may be imposed on Dental Laboratory violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

(7) Business Promotion violations may include, but are not limited to:

(A) Engaging in false advertising;

(B) Creating unjustified expectation;

(C) Failure to comply with requirements pertaining to professional signs;

(D) Failure to list in advertisement, at least one dentist practicing under trade name;

(E) Failure to make timely notification to telephone company and publishers of directories of any change in status or location; or

(F) Falsely advertising as a specialist in one of the specialties as defined by the American Dental Association.

(G) The amount of penalty that may be imposed on Business Promotion violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than $3000;

(ii) second offense may be up to, but not greater than $4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than $5000, and/or suspension to revocation.

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 7, 2002.

TRD-200207329
Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 463-6400

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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.10

The State Board of Dental Examiners proposes amendments to §115.10, Radiologic Procedures, which defines the requirements to qualify to perform radiologic procedures and to register with this agency. The State Board of Dental Examiners entered into a contract with an independent testing organization for the purpose of administering the radiologic examination to a dental assistant seeking certification to perform radiologic procedures. The language at subsection (e), paragraph (3) that provides for a licensed Texas dentist to administer the radiologic examination to a dental assistant is deleted.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule. The impact on state government will be $1950 for FY 2002, the cost for developing a testing and certification program that will be professionally administered. The agency will realize a cost savings of $3000 in travel expenses for FY 2003.

Dr. Bolton has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be enhancement of the public safety and welfare regarding the regulation of radiologic procedures in the dental profession.

There will be no effect on small or large businesses. The anticipated economic costs to persons applying to take this examination will be $37.00 for study materials purchased from the State Board of Dental Examiners and a $62.00 testing fee payable to the independent testing organization.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amended rule does not affect other statutes, articles, or codes.

§115.10. Radiologic Procedures.

(a) Any person performing radiologic procedures under the supervision of a Texas licensed dentist must register with the Texas State Board of Dental Examiners (TSBDE). A registrant may perform, by the direct oral or written order(s) of the supervising dentist, any radiologic procedures required for the diagnosis of the maxillofacial complex.

(b) This section does not apply to registered nurses or persons certified under the Medical Radiologic Technologist Certification Act.

(c) A dental hygienist who is licensed and currently registered in this state, shall be deemed to be registered for the purpose of performing radiologic procedures.

(d) An examination materials charge, not to exceed $37, payable to Texas State Board of Dental Examiners, will be assessed to those requiring examination under the provisions of this Act.

(e) A dental assistant is qualified to perform radiographic procedures if any one of the following criteria is met:

(1) current certification as a certified dental assistant by the Dental Assisting National Board, Inc.;

(2) successful completion of the dental radiation health and safety examination administered by the Dental Assisting National Board, Inc.; or

(3) successful completion of an examination specified by the TSBDE [~~and administered by a licensed Texas dentist~~].

(f) Dental assistants who are not qualified under the provisions of this section, may be allowed to perform necessary diagnostic radiographs under the direct supervision of the dentist for a period of six months as a part of their training and as a part of their examination, provided the dental assistant is personally supervised by a person authorized to perform radiologic procedures.

(g) All dental radiologic procedures can be performed by any person qualified and certified under this section.

(h) Registration may be revoked, for the following reasons:

(1) violation of the rules of the Texas State Board of Dental Examiners;

(2) violation of the Texas Dental Practice Act; and

(3) violation of all other applicable rules and statutes affecting radiologic procedures in Texas.

(i) All registrants must comply with the rules and regulations of the Texas Department of Health for control of radiation.

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 7, 2002.

TRD-200207330
Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 463-6400

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 218. DELEGATION OF SELECTED NURSING TASKS BY REGISTERED PROFESSIONAL NURSES TO UNLICENSED PERSONNEL

22 TAC §§218.1 - 218.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Board of Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Nurse Examiners for the State of Texas (BNE or Board) proposes the repeal of the current 22 TAC Chapter 218, §§218.1 - 218.11, pertaining to Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel, and concurrently proposes the adoption of two new chapters 22 TAC Chapter 224, relating to delegation in acute care environments or for acute conditions, and Chapter 225, relating to delegation in independent living environments for clients with stable and predictable conditions. The delegation chapter was last reviewed and amended in May 2000.

The 77th Texas Legislature (2001) passed House Bill 456, charging the BNE to form a task force to review the BNE's current delegation chapter (22 TAC Chapter 218) and make recommendations regarding the provision of health maintenance tasks to persons with functional disabilities in independent living environments. Membership on the task force was specified in the bill language. The Assistance with Functional Disabilities (AFD) Task Force was appointed in November of 2001. The task force met five times during the 2002 calendar year. Based on recommendations from the AFD task force and discussion at the Board meeting on October 24, 2002, the Board hereby proposes to repeal the current 22 TAC Chapter 218, and to concurrently propose two new chapters 22 TAC Chapters 224 and 225.

Kathy Thomas, Executive Director, has determined that there are no fiscal implications for state or local government entities for the first five-year period as a result of repealing the chapter.

Ms. Thomas has also determined that the public benefit of repealing the chapter is the clarification of the requirements and process for delegation across varied professional nursing practice settings by proposing two separate new chapters. There will not be an effect on small businesses or anticipated economic cost to individuals as a result of repealing the chapter.

Comments on the proposed repeal must be made 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 proposed repeal in the *Texas Register*.

The repeal is proposed under the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The repeal affects the Nursing Practice Act, Texas Occupations Code §§301.401 - 301.409, as it pertains to registered nurses.

§218.1. Purpose.
§218.2. Definitions.
§218.3. RN Accountability for Delegated Tasks.
§218.4. Application of Chapter.
§218.5. General Criteria for Delegation.
§218.6. Supervision.
§218.7. Delegation of Specific Tasks.
§218.8. Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks.
§218.9. The Medication Aide Permit Holder.
§218.10. Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners.
§218.11. Nursing Students Working as Unlicensed Personnel.

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 8, 2002.

TRD-200207338
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 305-6823

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CHAPTER 224. DELEGATION OF NURSING TASKS BY REGISTERED PROFESSIONAL NURSES TO UNLICENSED PERSONNEL FOR CLIENTS WITH ACUTE CONDITIONS OR IN ACUTE CARE ENVIRONMENTS

22 TAC §§224.1 - 224.11

The Board of Nurse Examiners for the State of Texas (BNE or Board) proposes new 22 TAC Chapter 224, §§224.1 - 224.11, pertaining to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments, concurrent with the proposed repeal of the current 22 TAC Chapter 218, and the proposed new Chapter 225, relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions. The current delegation chapter was last reviewed and amended in May 2000. The proposed new delegation chapters will be listed sequentially.

The 77th Texas Legislature (2001) passed House Bill 456, charging the BNE to form a task force to review the BNE's current delegation chapter (22 TAC Chapter 218) and make recommendations regarding the provision of health maintenance tasks to persons with functional disabilities in independent living environments. Membership on the task force was specified in the bill language. The Assistance with Functional Disabilities (AFD) Task Force was appointed in November of 2001. The task force met five times during the 2002 calendar year.

As the AFD task force was given the charge of looking at the concept of delegation in the independent living environment, the members in general were not comfortable making amendments to the acute care rule. Since some rearrangement of sections and content was necessary after pulling §218.8 from the chapter, however, Board staff reworked the current chapter which is now proposed new chapter 224. This proposed chapter would apply under two conditions: either the client is in an acute care setting; or the client's condition, in relation to the task to be delegated, is acute, i.e. unstable and/or unpredictable. Because either the setting or the client's status is more acute, the concept of exempting any tasks from the delegating authority of the RN is not permitted in this chapter. Thus, with the proposed Chapter 224, the RN must determine only whether or not to delegate a task to an unlicensed person.

Based on recommendations from the AFD task force and discussion at the Board meeting on October 24, 2002, the Board hereby

proposes to repeal the current Chapter 218 (relating to Delegation Of Selected Nursing Tasks By Registered Professional Nurses To Unlicensed Personnel), and propose two new chapters, 22 TAC Chapters 224 and 225.

Kathy Thomas, Executive Director, has determined that there are no fiscal implications for state or local government entities for the first five-year period as a result of this chapter.

Ms. Thomas has also determined that the public benefit of this chapter is the clarification of the requirements and process for delegation across varied professional nursing practice settings. There will be no anticipated cost to small businesses or individuals as a result of this chapter.

Comments on the proposed new chapter must be made 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 the proposed new chapter in the *Texas Register*.

The new chapter is proposed under the authority of the Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act, including rules relating to RN delegation to unlicensed personnel.

No statutes, codes, or articles would be affected by the proposed new chapter.

§224.1. Application of Chapter.

This chapter applies to situations where:

(1) the client has an acute health condition that is unstable or unpredictable; or

(2) the client is in an acute care environment where nursing services are continuously provided including, but not limited to, hospitals, rehabilitation centers, skilled nursing facilities, clinics, and private practice physician offices.

§224.2. Exclusions from Chapter.

This chapter does not apply to:

(1) tasks provided in compliance with Government Code §531.051(f) (relating to Voucher Program for Payment of Certain Services for Persons With Disabilities); or

(2) RNs who:

(A) supervise or instruct others in the gratuitous nursing care of the sick;

(B) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs;

(C) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks; and

(D) assign tasks to or supervise LVNs or other licensed practitioners practicing within the scope of their license.

§224.3. Purpose.

The Texas Board of Nurse Examiners (BNE or Board) recognizes that changes in health care delivery have and will continue to influence the way nursing care is delivered. The Board believes that the registered nurse (RN) is in a unique position to develop and implement a nursing plan of care that incorporates a professional relationship between the RN and the client. The Board recognizes that the RN's responsibility may vary from that of the nurse providing care at the bedside of an acutely ill client to that of the nurse managing health care delivery in institutional and community settings. Assessment of the nursing needs of the client, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the responsibilities of the RN. The full utilization of the services of a RN may require delegation of selected nursing tasks to unlicensed personnel. The scope of delegation and the level of supervision by the RN may vary depending on the setting, the complexity of the task, the skills and experience of the unlicensed person, and the client's physical and mental status. The following sections govern the RN in delegating nursing tasks to unlicensed personnel across a variety of settings where nursing care services are delivered.

§224.4. Definitions.

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

(1) Activities of daily living--Limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, and range of motion.

(2) Client--Refers to the individual and/or his/her family or significant others.

(3) Delegation--Authorizing an unlicensed person to provide nursing services while retaining accountability for how the unlicensed person performs the task. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

(4) Unlicensed person--An individual, not licensed as a health care provider:

(A) who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions;

(B) including, but is not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/assistance of health related services; or

(C) who is a professional nursing student, not licensed as a RN or LVN, providing care for monetary compensation and not as part of their formal educational program shall be considered to be unlicensed persons and must provide that care in conformity with this chapter.

§224.5. RN Accountability for Delegated Tasks.

(a) The RN's accountability to the BNE with respect to its taking disciplinary action against the RN's license is met when the delegating RN has complied with and can verify compliance with this chapter and specifically with §224.6 and §224.8(b)(1) of this title (relating to General Criteria for Delegation and Discretionary Delegation Tasks) as appropriate.

(b) This chapter does not change or apply to a RN's civil liability.

§224.6. General Criteria for Delegation.

The following standards must be met before the RN delegates nursing tasks to unlicensed persons. These criteria apply to all instances of RN delegation. Additional criteria, if appropriate to the particular task being delegated, may also be found in §224.8(b)(1) of this title (relating to Discretionary Delegation Tasks).

(1) The RN must make an assessment of the client's nursing care needs. The RN should, when the client's status allows, consult with the client, and when appropriate the client's family and/or significant other(s), to identify the client's nursing needs prior to delegating nursing tasks.

(2) The nursing task must be one that a reasonable and prudent RN would find is within the scope of sound nursing judgment to delegate. The RN should consider the five rights of delegation: the right task, the right person to whom the delegation is made, the right circumstances, the right direction and communication by the RN, and the right supervision as determined by the RN.

(3) The nursing task must be one that, in the opinion of the delegating RN, can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare.

(4) The nursing task must not require the unlicensed person to exercise professional nursing judgment; however, the unlicensed person may take any action that a reasonable, prudent non-health care professional would take in an emergency situation.

(5) The unlicensed person to whom the nursing task is delegated must be adequately identified. The identification may be by individual or, if appropriate, by training, education, and/or certification/permit of the unlicensed person.

(6) The RN shall have either instructed the unlicensed person in the delegated task, or verified the unlicensed person's competency to perform the nursing task. The verification of competence may be done by the RN making the decision to delegate or, if appropriate, by training, education, experience and/or certification/permit of the unlicensed person.

(7) The RN shall adequately supervise the performance of the delegated nursing task in accordance with the requirements of §224.7 of this title (relating to Supervision).

(8) If the delegation continues over time, the RN shall periodically evaluate the delegation of tasks. For example, the evaluation would be appropriate when the client's Nursing Care Plan is reviewed and revised. The RN's evaluation of a delegated task(s) will be incorporated into the client's Nursing Care Plan.

§224.7. Supervision.

The registered professional nurse shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with the following conditions. These supervision criteria apply to all instances of RN delegation for clients with acute conditions or in acute care environments.

(1) The degree of supervision required shall be determined by the RN after an evaluation of appropriate factors involved including, but not limited to, the following:

(A) the stability of the client's status in relation to the task(s) to be delegated;

(B) the training, experience, and capability of the unlicensed person to whom the nursing task is delegated;

(C) the nature of the nursing task being delegated; and

(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) The RN or another equally qualified RN shall be available in person or by telecommunications, and shall make decisions about appropriate levels of supervision using the following examples as guidelines:

(A) In situations where the RN's regularly scheduled presence is required to provide nursing services, including assessment, planning, intervention and evaluation of the client whose health status is changing and/or to evaluate the client's health status, the RN must be readily available to supervise the unlicensed person in the performance of delegated tasks. Settings include, but are not limited to acute care, long term care, rehabilitation centers, and/or clinics providing public health services.

(B) In situations where nursing care is provided in the client's residence but the client's status is unstable and unpredictable and the RN is required to assess, plan, intervene, and evaluate the client's unstable and unpredictable status and need for skilled nursing services, the RN shall make supervisory visits at least every fourteen calendar days. The RN shall assess the relationship between the unlicensed person and the client to determine whether health care goals are being met. Settings include, but are not limited to group homes, foster homes and/or the client's residence.

§224.8. Delegation of Tasks.

(a) Tasks Which are Most Commonly Delegated. By way of example, and not in limitation, the following nursing tasks are ones that are most commonly the type of tasks within the scope of sound professional nursing practice to be considered for delegation, regardless of the setting, provided the delegation is in compliance with §224.6 of this title (relating to General Criteria for Delegation) and the level of supervision required is determined by the RN in accordance with §224.7 of this title (relating to Supervision):

(1) non-invasive and non-sterile treatments;

(2) the collecting, reporting, and documentation of data including, but not limited to:

(A) vital signs, height, weight, intake and output, capillary blood and urine test for sugar and hematest results,

(B) environmental situations;

(C) client or family comments relating to the client's care; and

(D) behaviors related to the plan of care;

(3) ambulation, positioning, and turning;

(4) transportation of the client within a facility;

(5) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;

(6) feeding, cutting up of food, or placing of meal trays;

(7) socialization activities;

(8) activities of daily living; and

(9) reinforcement of health teaching planned and/or provided by the registered nurse.

(b) Discretionary Delegation Tasks.

(1) In addition to General Criteria for Delegation outlined in §224.6 of this title, the nursing tasks which follow in paragraph (2) of this subsection may be delegated to an unlicensed person only:

(A) if the RN delegating the task is directly responsible for the nursing care given to the client;

(B) if the agency, facility, or institution employing unlicensed personnel follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that the protocol is developed with input by registered nurses currently employed in the facility and includes:

(i) the manner in which the instruction addresses the complexity of the delegated task;

(ii) the manner in which the unlicensed person demonstrates competency of the delegated task;

(iii) the mechanism for reevaluation of the competency; and

(iv) an established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and

(C) if the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the RN's professional judgment.

(2) the following are nursing tasks that are not usually within the scope of sound professional nursing judgment to delegate and may be delegated only in accordance with, §224.6 of this title and paragraph (1) of this subsection. These types of tasks include:

(A) sterile procedures--those procedures involving a wound or an anatomical site which could potentially become infected;

(B) non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns;

(C) invasive procedures--inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube; and

(D) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment.

(c) Nursing Tasks Prohibited from Delegation By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(1) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(2) formulation of the nursing care plan and evaluation of the client's response to the care rendered;

(3) specific tasks involved in the implementation of the care plan which require professional nursing judgment or intervention;

(4) the responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and

(5) administration of medications, including intravenous fluids.

§224.9. The Medication Aide Permit Holder.

(a) A RN may delegate to medication aides the administration of medication to for clients in long term care facilities and home health agencies if:

(1) the medication aide holds a valid permit issued by the appropriate state agency to administer medications in that facility or agency;

(2) the RN assures that the medication aide functions in compliance with the laws and regulations of the agency issuing the permit; and

(3) the route of administration is oral, via a permanently placed feeding tube, sublingual or topical including eye, ear or nose drops and vaginal or rectal suppositories.

(b) The following tasks may not be delegated to the Medication Aide Permit Holder unless allowed and in compliance with Chapter 225 of this title (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions):

(1) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(2) administration of the initial dose of a medication that has not been previously administered to the client;

(3) administration of medications by an injectable route except as described for subcutaneous injectable insulin in §225.11 of this title (relating to Delegation of Administration of Medications From Pill Reminder Container and Administration of Insulin).

(4) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments except as described for unit dose medication administration by way of inhalation for prophylaxis and/or maintenance in §225.10(10)(E) of this title (relating to Tasks That May Be Delegated).

(5) administration of medications by way of a tube inserted in a cavity of the body except as stated in §225.11 of this title.

(6) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(7) responsibility for ordering a client's medication from the pharmacy.

§224.10. Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners.

(a) The following applies to the registered professional nurse who practices in a collegial relationship with another licensed practitioner who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities. The RN's accountability to the BNE, with respect to its taking disciplinary action against the RN's license, is met if the RN:

(1) verifies the training of the unlicensed person;

(2) verifies that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare; and

(3) adequately supervises the unlicensed person.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task.

§224.11. Application of Other Laws and Regulations.

BNE §217.11(1) of this title (relating to Standards of Professional Nursing Practice) requires RNs to know and conform to all laws and regulations affecting their area of practice. The RN delegating tasks to an unlicensed person should be aware that, in addition to this chapter, various laws and regulations may apply to, including but not limited to, laws and regulations governing home and community support services agencies, Medicare and Medicaid regulations, and Medication Aide regulations. In situations where a RN's practice is governed by multiple laws and regulations that impose different requirements, the RN must comply with them all and if inconsistent, the most restrictive requirement(s) governs. For example, if one regulation requires an RN to make a supervisory visit every 14 days and another leaves it to the RN's professional judgment, the RN would have to visit at least every 14 days or more frequently, if that is what the RN's professional judgment indicated.

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 8, 2002.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6823

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CHAPTER 225. RN DELEGATION TO UNLICENSED PERSONNEL AND TASKS NOT REQUIRING DELEGATION IN INDEPENDENT LIVING ENVIRONMENTS FOR CLIENTS WITH STABLE AND PREDICTABLE CONDITIONS

22 TAC §§225.1 - 225.14

The Board of Nurse Examiners for the State of Texas (BNE or Board) proposes new 22 TAC Chapter 225, §§225.1 - 225.14, pertaining to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions, concurrent with the proposed repeal of the current 22 TAC Chapter 218, and the proposed adoption of new Chapter 224, relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments. The delegation chapter was last reviewed and amended in May 2000. The proposed new delegation chapters will be listed sequentially.

The 77th Texas Legislature (2001) passed House Bill 456, charging the BNE to form a task force to review the BNE's current delegation chapter (22 TAC Chapter 218) and make recommendations regarding the provision of health maintenance tasks to persons with functional disabilities in independent living environments. Membership on the task force was specified in the bill language. The Assistance with Functional Disabilities (AFD) Task Force was appointed in November of 2001. The task force met five times during the 2002 calendar year. Proposed Chapter 225 language drafted by a subcommittee of AFD members was submitted to the full AFD Task Force at a September 23, 2002, meeting. The basic underlying assumptions of this proposed chapter are that in order for a RN to apply the criteria in the chapter, the client must first be in an independent living environment, and the client's condition must be stable and predictable in relation to the task(s) under the RN's consideration for delegation to an unlicensed person(s). Based on recommendations from the AFD task force and discussion at the Board meeting on October 24, 2002, the Board hereby proposes new Chapter 225.

In review and discussion of House Bill 456 and Chapter 218, Task Force members recognized that the public preference in the provision of health care services includes the desire for greater client choice and control in the community-based setting, where the traditional "illness" model is too limiting. Through several meetings, the task force moved forward with the concept that if the client or client's responsible adult is capable of directing an unlicensed person in the performance of certain basic, health-maintenance tasks, the RN can determine that the task(s) does not need to be delegated. Assuming the RN uses good professional judgment in making this determination, the RN is not responsible for the non-delegated tasks performed by the unlicensed assistive person (UAP). The RN does not need to assess the unlicensed person's skill in relation to "tasks that do not require delegation" as the client or client's responsible adult is capable of both directing the UAP and determining minimal competency in performance of the task. Three levels of tasks are proposed: 1) Activities of Daily Living (ADLs): such as bathing, grooming, toileting; 2) Health Maintenance Activities (HMAs): these are tasks that are higher-level than ADLs but are of a daily or routine nature for the client. Task examples include medication administration or I&O (in and out) catheterization; 3) Nursing Tasks: these are tasks that constitute nursing and could, therefore, only be done by a UAP if delegated by a RN. Some nursing tasks cannot be delegated as they require independent nursing judgment, and therefore, only a RN may perform these functions (see proposed §225.12, relating to Tasks Prohibited From Delegation). Examples of tasks that may not be delegated include nursing assessment, formulation of a nursing care plan, and initial health teaching.

Based on several factors delineated in this proposed chapter, the RN can determine that ADLs and/or HMAs do not require delegation for a given client. Flexibility is built into the chapter such that if the client's condition becomes acute or unstable in relation to one task, this does not preclude the RN from continuing to exempt other tasks being done by the UAP from delegation; only the task related to the client's acute condition would require RN delegation.

Kathy Thomas, Executive Director, has determined that there are no fiscal implications for state or local government entities for the first five-year period as a result of this chapter.

Ms. Thomas has also determined that the public benefit of this chapter is the clarification of the requirements and process for delegation across varied professional nursing practice settings. There will be no anticipated cost to small businesses or individuals as a result of this chapter.

Comments on the proposed new chapter must be made 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 new chapter is proposed under the authority of the Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act, including rules relating to RN delegation to unlicensed personnel.

No statutes, codes, or articles would be affected by this proposed chapter.

§225.1. Application of Chapter.

(a) This chapter applies only to situations meeting the following criteria:

(1) the client is in an independent living environment;

(2) the client, if 16 or older, or client's responsible adult is willing and able to participate in decisions about the overall management of the client's health care; and

(3) the task is for a stable, predictable condition as defined by §225.4 of this title (relating to Definitions).

(b) If the situation does not meet the above criteria in subsection (a) of this section, any delegation of nursing tasks by the RN to an unlicensed person must comply with BNE Chapter 224 of this title (relating to Delegation of Tasks Relating to Acute Conditions or Settings Other Than Independent Living Environments).

(c) Should a client develop an acute condition that is unstable or unpredictable, this chapter may still be applicable to tasks that relate solely to the client's stable and predictable condition(s) and not to the acute condition(s).

§225.2. Exclusions from Chapter.

This chapter does not apply to:

(1) tasks performed for acute, unstable, or unpredictable conditions;

(2) settings where nursing services are continuously provided;

(3) tasks provided in compliance with Government Code §531.051(f) (relating to certain tasks performed for clients under certain state-funded programs not constituting practice of professional nursing);

(4) RNs who:

(A) supervise or instruct others in the gratuitous nursing care of the sick;

(B) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs;

(C) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks; and

(D) assign tasks to or supervise LVNs or other licensed practitioners practicing within the scope of their license.

§225.3. Purpose.

(a) The Texas Board of Nurse Examiners (BNE or Board) recognizes that public preference in the provision of health care services includes a greater opportunity for clients to share with the RN in the choice and control for delivery of services in the community based setting. The Board also appreciates that the provision of health care is dynamic in nature and continually evolving. As professional nurses, regardless of practice setting, RNs are obligated to assess the nursing needs of the client, develop a plan of nursing actions, implement this plan, and evaluate the outcome. These are essential components of RN practice that identify professional nursing as a process discipline. Professional nursing while inclusive of tasks is not focused on tasks but rather on interventions or client-centered actions initiated to assist the client in accomplishing the goals defined in the nursing care plan.

(b) In the independent living environment, RNs encounter clients across the spectrum of health to illness. The primary goal is to assist the choice of the client to achieve the most integrated setting/least restrictive environment throughout the life span. This is regularly accomplished, in part, through the assistance of unlicensed personnel who work with the client to complete a variety of tasks on a daily basis. Some tasks that are considered nursing tasks in the acute care setting are considered support services necessary to assist the client to maintain client health, and thus the highest degree of independence and quality of life possible, in the independent living environment.

(c) The purpose of this chapter is to provide guidance to RNs practicing in independent living environments in incorporating the use of unlicensed personnel to achieve optimal health benefits for the client. Clients in these settings have needs that may be categorized as activities of daily living (ADLs), health maintenance activities (HMAs), or nursing tasks. For some clients, ADLs and HMAs may be of a routine and supportive nature that minimizes the need for RN involvement.

(d) The RN shall collaborate with the client and/or the client's responsible adult in pursuit of the highest possible degree of independent living for the client. By adequately and accurately assessing the needs of the client in this setting, and considering the inter-related factors impacting the client's environment, the RN can effectively make decisions in utilizing unlicensed personnel to accomplish quality supportive services and care.

§225.4. Definitions.

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

(1) Activities of daily living (ADLs)--limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, range of motion, and assistance with self administered medications. The term does not include more specific tasks defined as health maintenance activities under paragraph (8) of this section (relating to Health Maintenance Activities).

(2) Administration of Medications--removal of an individual/unit dose from a previously dispensed, properly labeled container; verifying it with the medication order; giving the correct medication and the correct dose to the proper client at the proper time by the proper route; and accurately recording the time and dose given.

(3) Assistance with self-administered medication--any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy.

(4) Client--the individual receiving care.

(5) Client's Responsible Adult--an individual, 18 or older, normally chosen by the client, who is willing and able to participate in decisions about the overall management of the client's health care and to fulfill any other responsibilities required under this chapter for care of the client. The term includes but is not limited to parent, foster parent, family member, significant other, or legal guardian.

(6) Delegation--authorizing an unlicensed person to provide nursing services while retaining accountability for how the unlicensed person performs the task. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

(7) Functional Disability--a mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and ADLs.

(8) Health Maintenance Activities (HMAs)--limited to the following tasks that enable the client to remain in an independent living environment and that go beyond ADLs because of the higher skill level required to perform:

(A) administering oral medications that are normally self-administered, including administration through a permanently placed feeding tube with irrigation;

(B) the administering of a bowel and bladder program, including suppositories, enemas, manual evacuation, intermittent catheterization, digital stimulation associated with a bowel program, tasks related to external stoma care including but not limited to pouch changes, measuring intake and output, and skin care surrounding the stoma area;

(C) routine care of a Stage 1 decubitus;

(D) feeding and irrigation through a permanently placed feeding tube inserted in a surgically created orifice or stoma; and

(E) such other tasks as the Board may designate.

(9) Independent living environment--A client's individual residence which may include a home or homelike setting such as the client's home, an entity licensed or regulated by a state or federal agency or exempt from such licensure or regulation, (such as a group home, foster home, or assisted living facility), and includes where the client works, attends school, or engages in other community activities. The term does not include settings in which nursing services are continuously provided.

(10) Not Requiring Delegation--a determination by a RN that the performance of an ADL or HMA for a particular client does not constitute the practice of professional nursing based on criteria established by the Board/this chapter.

(11) Stable and predictable--a situation where the client's clinical and behavioral status is determined to be non-fluctuating and consistent. A stable/predictable condition involves long term health care needs which are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the client's clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessment and evaluation of a registered nurse or licensed vocational nurse. The condition of clients receiving hospice care in an independent living environment where deterioration is predictable shall be deemed to be stable and predictable.

(12) Unlicensed person--an individual, not licensed as a health care provider:

(A) who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions;

(B) who provides those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous care for the sick under §301.004(1) of the Nursing Practice Act;

(C) including, but not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/assistance of health related services; or

(D) who is a professional nursing student, not licensed as a RN or LVN, providing care for monetary compensation and not as part of their formal educational program shall be considered to be unlicensed persons and must provide that care in conformity with this chapter.

§225.5. RN Accountability.

(a) The RN is responsible for proper performance of the assessment required by §225.6 of this title (relating to RN Assessment of the Client) and for the RN's decisions made as a result of that assessment including determining that performance of a particular ADL or HMA for a particular client qualifies as not requiring delegation.

(b) The RN is not accountable for an unlicensed person's actual performance of ADLs or HMAs not requiring delegation.

(c) The RN's accountability to the BNE with respect to its taking disciplinary action against the RN's license is met when the RN can verify compliance with this chapter.

(d) This chapter does not change a RN's civil liability.

§225.6. RN Assessment of the Client.

(a) The RN, in consultation with the client if 16 or older, and when appropriate the client's responsible adult, must make an assessment to determine if the care:

(1) can be delegated to an unlicensed person;

(2) qualifies as an ADL or HMA not requiring delegation; or

(3) should not be delegated.

(b) In making this determination, the RN shall consider each of the following elements of assessment to develop an overall picture of the client's health status:

(1) the ability of the client or client's responsible adult to participate in the health care decision and ability and willingness to participate in the management and direction of the task;

(2) the adequacy and reliability of support systems available to the client or client's responsible adult;

(3) the degree of the stability and predictability of the client's health status relative to which the task is performed;

(4) the knowledge base of the client or client's responsible adult about the client's health status;

(5) the ability of the client or client's responsible adult to communicate with an unlicensed person in traditional or non-traditional ways; and

(6) how frequently the client's status shall be reassessed.

(c) While each element must be assessed, strength in one factor may compensate/offset a weakness in another factor. The assessment under this section does not require the RN to determine the competency of the unlicensed person.

§225.7. Activities of Daily Living Not Requiring Delegation.

(a) Activities of daily living (ADLs), as defined in this chapter, that do not fall within the practice of professional nursing may be performed by an unlicensed person in accordance with this section without being delegated. The Board has determined that in situations governed by this chapter ADLs do not fall within the practice of professional nursing when:

(1) performed for a person with a functional disability and the client would perform the task(s) but for the functional disability; and

(2) the RN determines, based on an assessment under §225.6 of this title (relating to RN Assessment of the Client) that the task(s) is such that it could be performed by any unlicensed person without RN supervision.

(b) If the above criteria cannot be met, an ADL may still be performed as a delegated task if it meets the criteria of §225.9 of this title (relating to Delegation Criteria).

§225.8. Health Maintenance Activities Not Requiring Delegation.

(a) Health Maintenance Activities (HMAs), as defined in this chapter that do not fall within the practice of professional nursing, may

be performed by an unlicensed person in accordance with this section without being delegated. The Board has determined that in situations governed by this chapter HMAs do not fall within the practice of professional nursing when:

(1) performed for a person with a functional disability;

(2) in addition to the client assessment under §225.6 of this title (relating to RN Assessment of the Client), a RN determines all of the following conditions exist:

(A) the client would perform the task(s) but for her/his functional disability;

(B) the task(s) can be directed by the client or client's responsible adult to be performed by an unlicensed person without RN supervision;

(C) the client or client's responsible adult is able, and has agreed in writing, to participate in directing the unlicensed person's actions in carrying out the HMA; and

(D) Either

(i) the client is willing and able to train the unlicensed person in the proper performance of the HMA, or

(ii) the client's responsible adult is capable of training the unlicensed person in the proper performance of the task and

(I) will be present when the task is performed, or

(II) if not present, will have observed the unlicensed person perform the task at least once to assure he/she can competently perform the task and will be immediately accessible in person or by telecommunications to the unlicensed person when the task is performed.

(b) If the above criteria cannot be met, an HMA may still be performed as a delegated task if it meets the criteria of §225.9 of this title (relating to Delegation Criteria).

§225.9. Delegation Criteria.

(a) When determining whether to delegate a nursing task or those ADLs or HMAs requiring delegation, the RN, in addition to the assessment under §225.6 of this title (relating to RN Assessment of the Client), shall:

(1) determine that the task does not require the unlicensed person to exercise nursing judgment;

(2) verify the experience and competency of the unlicensed person to perform the task, including the unlicensed person's ability to recognize and inform the RN of client changes related to the task. The RN must have either:

(A) instructed the unlicensed person in the delegated task; or

(B) verified the unlicensed person's competency to perform the nursing task based on personal knowledge of the training, education, experience and/or certification/permit of the unlicensed person.

(3) determine, in consultation with the client or the client's responsible adult, the level of supervision and frequency of supervisory visits required, taking into account:

(A) the stability of the client's status;

(B) the training, experience and capability of the unlicensed person to whom the nursing task is delegated;

(C) the nature of the nursing task being delegated;

(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed; and

(E) the level of participation of client or client's responsible adult; and

(4) consider whether the five rights of delegation can be met: the right task; the right person to whom the delegation is made; the right circumstances; the right direction and communication by the RN; and the right supervision.

(b) The RN or another RN qualified to supervise the unlicensed person shall be available, in person or by telecommunications when the unlicensed person is performing the task.

(c) If the RN is employed, the employing entity must have a written policy acknowledging that the final decision to delegate shall be made by the RN in consultation with client or client's responsible adult.

§225.10. Tasks That May Be Delegated.

A RN may delegate the following tasks unless the RN's assessment under §225.6 of this title (relating to RN Assessment of the Client) and §225.9 of this title (relating to Delegation Criteria) determines that the task is not a task a reasonable and prudent nurse would delegate. Tasks include:

(1) an ADL the RN has determined requires delegation under §225.7 of this title (relating to Activities of Daily Living Not Requiring Delegation);

(2) a HMA the RN has determined requires delegation under §225.8 of this title (relating to Health Maintenance Activities Not Requiring Delegation);

(3) non-invasive and non-sterile treatments with low risk of infection;

(4) the collecting, reporting, and documentation of data including, but not limited to

(A) vital signs, height, weight, intake and output, capillary blood and urine test for sugar and hematest results,

(B) environmental situations/living conditions that affect the client's health status,

(C) client or significant other's comments relating to the client's care, and

(D) behaviors related to the plan of care;

(5) reinforcement of health teaching provided by the registered nurse;

(6) inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube limited to the following:

(A) insertion and/or irrigation of urinary catheters for purpose of intermittent catheterization; and

(B) irrigation of an indwelling tube such as a urinary catheter or permanently placed feeding tube;

(7) tracheal care to include instilling normal saline and suctioning of a tracheostomy with routine supplemental oxygen administration;

(8) care of broken skin with low risk of infection;

(9) sterile procedures those procedures involving a wound or an anatomical site that could potentially become infected;

(10) administration of medications that are administered:

(A) orally or via permanently placed feeding tube inserted in a surgically created orifice or stoma;

(B) sublingually;

(C) topically;

(D) eye and ear drops; nose drops and sprays;

(E) vaginal or rectal suppositories;

(F) unit dose medication administration by way of inhalation for prophylaxis and/or maintenance; and

(G) oxygen administration for the purpose of non-acute respiratory maintenance.

(11) administration of oral unit dose medications from the client's daily reminder pill container in accordance with §225.11(a) of this title (relating to Delegation of Administration of Medications From Pill Reminder Container and Administration of Insulin);

(12) administration of insulin subcutaneously, nasally, or via insulin pump in accordance with §225.11(b) of this title; and

(13) other such tasks as the Board may designate.

§225.11. Delegation of Administration of Medications From Pill Reminder Container and Administration of Insulin.

(a) In addition to all previous criteria listed, when delegating the administration of oral unit dose medications from the client's daily pill reminder container, the RN must:

(1) ensure that the unit dose medication(s) are placed in the client's daily reminder pill container, from properly dispensed prescription bottle(s), by the RN or a person mutually agreed upon by the RN and client or client's responsible adult who has demonstrated the ability to complete the task properly;

(2) instruct the client or client's responsible adult and the unlicensed person involved in such delegation activity about each medication placed in such a container with regard to distinguishing characteristics of each medication, proper time, dose, route and adverse effects which may be associated with the medication;

(3) provide to the client, client's responsible adult if applicable, and the unlicensed person(s) instructions to contact the RN before the medication is administered when there are questions concerning the medications or changes in the client's status related to the medication being given. An example is when the medications appear to be rearranged or missing.

(4) make supervisory visits in the event there are changes in the client's status related to the medication being given and determine the frequency of supervisory visits in consultation with the client or the client's responsible adult to assure that safe and effective services are being provided; and

(5) ensure the client or client's responsible adult acknowledges in writing that the administration of medication(s) under this section will be delegated to an unlicensed person.

(b) In addition to all previous criteria listed, when delegating administration of insulin subcutaneously, nasally, or via insulin pump the RN must:

(1) arrange for a RN to be available on call for consultation/intervention 24 hours each day;

(2) provide teaching of all aspects of insulin administration, subcutaneously, nasally, or via insulin pump to the client and the unlicensed person to include, but not limited to proper technique for determination of the client's blood sugar prior to each administration of insulin, proper injection technique, risks, side effects and the correct response(s). The RN must leave written instructions for the performance of the administration of insulin subcutaneously, nasally, or via insulin pump, including a copy of the physician's order or instructions, for the unlicensed person, client, or client's responsible adult to use as a reference.

(3) delegate the administration of insulin subcutaneously, nasally, or via insulin pump to an unlicensed person, specific to one client. The RN must teach that the administration of insulin subcutaneously, nasally, or via insulin pump is to be performed only for the patient for whom the instructions are provided and instruct the unlicensed person that the task is client specific and not transferable to other clients or providers;

(4) delegate the administration of insulin subcutaneously, nasally, or via insulin pump to additional unlicensed persons providing care to the specific client provided the registered nurse limits the number of unlicensed persons to the number who will remain proficient in performing the task and can be safely supervised by the registered nurse;

(5) make supervisory visits to the client's location at least 3 times within the first 60 days (one within the first two weeks, one within the second two weeks and one in the last 30 days) to evaluate the proper medication administration of insulin by the unlicensed person(s). After the initial 60 days, the RN, in consultation with the client or client's responsible adult, shall determine the frequency for supervisory visits to assure the proper and safe administration of insulin by the unlicensed person(s). Separate visits shall be made for each unlicensed person administering insulin;

(6) make supervisory visits in the event there are changes in the client's status; and

(7) ensure that the client or client's responsible adult acknowledges in writing that the administration of medication(s) under this section will be delegated to an unlicensed person.

§225.12. Tasks Prohibited From Delegation.

The following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(1) physical, psychological, and social assessment, which requires professional nursing judgment, intervention, referral, or follow-up;

(2) formulation of the nursing care plan and evaluation of the client's response to the care rendered;

(3) specific tasks involved in the implementation of the care plan that require professional nursing judgment or intervention;

(4) the responsibility and accountability for client or client's responsible adult health teaching and health counseling which promotes client or client's responsible adult education and involves the client's responsible adult in accomplishing health goals; and

(5) the following tasks related to medication administration:

(A) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(B) administration of medications by an injectable route except for subcutaneous injectable insulin as permitted by §225.11(b) of this title (relating to Delegation of Administration of Medications From Pill Reminder Container and Administration of Insulin);

(C) administration of medications by way of a tube inserted in a cavity of the body except as permitted by §225.10(10) of this title (relating to Task That May Be Delegated);

(D) responsibility for receiving or requesting verbal or telephone orders from a physician, dentist, or podiatrist; and

(E) administration of the initial dose of a medication that has not been previously administered to the client unless the RN documents in the client's medical record the rationale for authorizing the unlicensed person to administer the initial dose.

§225.13. Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners.

(a) The following applies to the registered nurse who practices in a collegial relationship with another licensed practitioner who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities. The RN's accountability to the BNE, with respect to its taking disciplinary action against the RN's license, is met if the RN:

(1) verifies the training of the unlicensed person;

(2) verifies that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare; and

(3) adequately supervises the unlicensed person.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task.

§225.14. Application of Other Laws and Regulations.

BNE §217.11(1) of this title (relating to Standards of Professional Nursing Practice) requires RNs to know and conform to all laws and regulations affecting their area of practice. The RN authorizing an unlicensed person to perform tasks in independent living environments should be aware to that, in addition to this chapter, various laws and regulations may apply including, but not limited to, laws and regulations governing home and community support service agencies and Medicare and Medicaid regulations. In situations where a RN's practice is governed by multiple laws and regulations that impose different requirements, the RN must comply with them all and if inconsistent, the most restrictive requirement(s) governs. For example, if one regulation requires a RN to make a supervisory visit every 14 days and another leaves it to the RN's professional judgment, the RN would have to visit at least every 14 days or more frequently, if that is what the RN's professional judgment indicated.

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 8, 2002.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 305-6823

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACT FORMS

22 TAC §§537.11, 537.20, 537.28, 537.30, 537.31, 537.32, 537.37, 537.43, 537.46

The Texas Real Estate Commission (TREC) proposes amendments to §§537.11, 537.20, 537.28, 537.30, 537.31, 537.32, 537.37, 537.43, and 537.46, concerning standard contract forms. These amendments and new sections would adopt by reference six revised contract forms and two addenda to be used by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas and six brokers appointed by TREC.

The amendment to §537.11 would renumber the revised forms promulgated by TREC.

The amendment to §537.20 would adopt by reference Standard Contract Form TREC No. 9-5, Unimproved Contract Form. The form would be revised to permit a prequalified buyer to make the contract subject only to the property satisfying lender's loan underwriting requirements. The paragraph regarding Earnest Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Other changes would permit the buyer to have the survey exception to title policy deleted at the buyer's expense. The form would provide that the parties could agree on the period of time for the buyer to make title objections and would clarify the time period to cure objections. Title defects to which buyer can object would be rewritten for clarity and propose to include an objection for any part of the property lying in a flood plain. The form would be revised to add title notices for property located in a certificated service area of a utility service provider and a Texas Agricultural Development District. Financing conditions, seller financing details and loan assumption provisions would be deleted and existing separate addenda used. The form would add sellers disclosures regarding, among other things, flooding, litigation, environmental hazards, dumpsites, wetlands, and endangered species. An automatic extension of closing for up to 15 days for satisfaction of lender's closing requirements would be eliminated. The revised form would clarify when the buyer takes possession. Closing cost provisions would be combined for conventional and FHA/VA transactions. A blank would be added for the seller to pay a portion of the buyer's expenses. The revised form would permit the parties to agree to mediate their disputes without using an addendum. A list of contract addenda would be added along with boxes to indicate which addenda would be made part of the contract. An option clause would be moved to a new paragraph and made applicable only if all blanks have been filled in and the option fee has been paid. A receipt would be added for the option fee. Office addresses and facsimile numbers would be added to the contract for listing and selling associates.

The amendment to §537.28 would adopt by reference Standard Contract Form TREC No. 20-6, One to Four Family Residential Contract (Resale). The form would be revised to clarify the time period to cure objections. The paragraph regarding Earnest

Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Closing cost provisions would be clarified by combining buyers expenses into one paragraph rather than two separate subparagraphs for conventional/FHA financing and VA financing. The modified form proposes to delete the "not to exceed" blank for PMI, VA loan funding fee and MIP, which fixed a maximum on the amount of such fees to be paid by buyer, and replaces the blank with a clause that states that buyer shall pay such fees as required by lender.

The amendment to §537.30 would adopt by reference Standard Contract Form TREC No. 23-5, New Home Contract (Incomplete Construction). The form would be revised to permit a prequalified buyer to make the contract subject only to the property satisfying the lender's loan underwriting requirements. The paragraph regarding Earnest Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Other changes would permit the buyer to have the survey exception to title policy deleted at the buyer's expense. The parties could agree on the period of time for the buyer to make title objections. Financing conditions, seller financing details and loan assumption provisions would be deleted and existing separate addenda used. The revised form would provide that change orders to the construction documents must be in writing and a decrease in costs resulting from change orders and unused allowances would reduce the sales price and proportionately adjust the cash portion of the sales price and the amount financed as required by lender. The construction commencement date would be measured from the effective date of the contract rather than from the date of loan approval. The form would add sellers disclosures regarding, among other things, flooding, litigation, environmental hazards, dumpsites, wetlands, and endangered species. An automatic extension of closing for up to 15 days for satisfaction of lender's closing requirements would be eliminated. The revised form would clarify when the buyer takes possession. Closing cost provisions would be combined for conventional and FHA/VA transactions. A blank would be added for the seller to pay a portion of the buyer's expenses. The revised form would permit the parties to agree to mediate their disputes without using an addendum. A list of contract addenda would be added along with boxes to indicate which addenda have been made part of the contract. An option clause would be moved to a new paragraph and made applicable only if all blanks have been filled in and the option fee has been paid. A receipt would be added for the option fee. Office addresses and facsimile numbers would be added to the contract for listing and selling associates.

The amendment to §537.31 would adopt by reference Standard Contract Form TREC No. 24-5, New Home Contract (Complete Construction). The form would be revised to permit a prequalified buyer to make the contract subject only to the property satisfying the lender's loan underwriting requirements. The paragraph regarding Earnest Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Other changes would permit the buyer to have the survey exception to title policy deleted at the buyer's expense and rely upon the seller's existing survey in lieu of having a new survey. The parties could agree when the buyer must be furnished or obtain a new survey and the period of time for the buyer to make title objections. Financing conditions, seller financing details and loan assumption provisions would be deleted and existing separate addenda used. The form would add sellers disclosures regarding, among other things, flooding, litigation, environmental hazards, dumpsites, wetlands, and endangered species. An automatic extension of closing for up to 15 days for satisfaction of lender's closing requirements would be eliminated. The revised form would clarify when the buyer takes possession. Closing cost provisions would be combined for conventional and FHA/VA transactions. A blank would be added for the seller to pay a portion of the buyer's expenses. The revised form would permit the parties to agree to mediate their disputes without using an addendum. A list of contract addenda would be added along with boxes to indicate which addenda have been made part of the contract. An option clause would be moved to a new paragraph and made applicable only if all blanks have been filled in and the option fee has been paid. A receipt would be added for the option fee. Office addresses and facsimile numbers would be added to the contract for listing and selling associates.

The amendment to §537.32 would adopt by reference Standard Contract Form TREC No. 25-4, Farm and Ranch Contract. The form would be reformatted and revised to divide the property description into four major parts: land, improvements, accessories and crops. The form would be revised to permit a prequalified buyer to make the contract subject only to the property satisfying the lender's loan underwriting requirements. Financing conditions, seller financing details and loan assumption provisions would be deleted and existing separate addenda used. The paragraph regarding Earnest Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Other changes would permit the buyer to have the survey exception to title policy deleted at the buyer's expense. The parties could agree on the period of time for the buyer to make title objections measured from receipt of the commitment, exception documents and survey. Title defects to which buyer can object would be rewritten for clarity and propose to include an objection for any part of the property lying in a flood plain. The reference to the TREC Addendum for Abstract of Title would be deleted. Blank lines would be provided for the seller to list exception documents and surface leases; the form would clarify that exception documents and leases will be permitted exceptions in the title policy and will not be a basis for objection to title. The form would add sellers disclosures regarding, among other things, flooding, litigation, environmental hazards, dumpsites, wetlands, and endangered species. The form would be revised to add title notices for property located in a certificated service area of a utility service provider and a Texas Agricultural Development District. The modified form would provide blanks for seller to identify governmental programs that the property is subject to and would provide for allocation or proration of governmental program by separate agreement. An automatic extension of closing for up to 15 days for satisfaction of lender's closing requirements would be eliminated. The revised form would clarify when the buyer takes possession. Closing cost provisions would be combined for conventional and FHA/VA transactions. A blank would be added for the seller to pay a portion of the buyer's expenses. The revised form would provide for proration of unknown rentals such as those related to crop production once such rentals become known. The revised form would permit the parties to agree to mediate their disputes without using an addendum. A list of contract addenda would be added along with boxes to indicate which addenda have been made part of the contract. An option clause would be moved to a new paragraph and made applicable only if all blanks have been filled in and the option fee has been paid. A receipt would be added for the option fee. Office addresses and facsimile numbers would be

added to the contract for listing and selling associates. The revised form would provide an agreement for payment of broker's fee; the parties would indicate whether the buyer or seller will pay the listing/ principal broker and whether the buyer or seller will pay the Other Broker; the parties would select the amount and type of payment (cash fee or % of total sales price) to listing/principal broker and other broker. The form would provide a notice in bold font that broker's fees are negotiable and not controlled by TREC and would provide for separate signatures by buyer and seller to indicate their agreement for payment of broker's fees.

The amendment to §537.37 would adopt by reference Standard Contract Form TREC No. 30-3, Residential Condominium Contract (Resale). The form would be revised to clarify the time period to cure objections. The paragraph regarding Earnest Money would be modified to measure the deposit date for additional earnest money from the effective date of the contract. Closing cost provisions would be clarified by combining buyers expenses into one paragraph rather than two separate subparagraphs for conventional/FHA financing and VA financing. The modified form proposes to delete the "not to exceed" blank for PMI, VA loan funding fee and MIP, which fixed a maximum on the amount of such fees to be paid by buyer, and replaces the blank with a clause that states that buyer shall pay such fees as required by lender.

The amendment to §537.43 would adopt by reference Standard Contract Form TREC No. 36-2, Addendum for Property Subject to Mandatory Membership in an Owners' Association, a form that a seller may use to provide certain statutory notices regarding membership in an owners' association. The form would be modified to add a provision to clarify that if the buyer terminates the contract pursuant to the provisions of the addendum, the earnest money will be refunded to buyer.

The amendment to §537.46 would adopt by reference Standard Contract Form TREC No. 39-4, Amendment, a form used by the parties to amend a contract. The form would be revised to change a reference to a specific paragraph in item number 5 since the paragraph number has changed in the TREC contract forms.

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

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

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

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

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 9-5 [~~9-4~~] is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-4 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-6 [~~20-5~~] is promulgated for use in the resale of residential real estate. Standard Contract Form TREC No.23-5 [~~23-4~~] is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-5 [~~24-4~~] is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-4 [~~25-3~~] is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. [~~Standard Contract Form TREC No. 29-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished.~~] Standard Contract Form TREC No. 30-4 [~~30-3~~] is promulgated for use in the resale of a residential condominium unit. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. [~~Standard Contract Form TREC No. 35-2 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation.~~] Standard Contract Form TREC Form No. 36-2 [~~36-1~~] is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-1 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-4 [~~39-3~~] is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

(b)-(j) (No change.)

§537.20. Standard Contract Form TREC No. 9-5 [~~9-4~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-5 [~~9-4~~] approved by the Texas Real Estate Commission in 2003 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.28. Standard Contract Form TREC No. 20-6 [~~20-5~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-6 [~~20-5~~] approved by the Texas Real Estate Commission in 2003 [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.30. Standard Contract Form TREC No. 23-5 [~~23-4~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-5 [~~23-4~~] approved by the Texas Real Estate Commission in 2003 [~~2000~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.31. Standard Contract Form TREC No. 24-5 [~~24-4~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-5 [~~24-4~~] approved by the Texas Real Estate Commission in 2003 [~~2000~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.32. Standard Contract Form TREC No. 25-4 [~~25-3~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-4 [~~25-3~~] approved by the Texas Real Estate Commission in 2003 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.37. Standard Contract Form TREC No. 30-4 [~~30-3~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-4 [~~30-3~~] approved by the Texas Real Estate Commission in 2003 [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.43. Standard Contract Form TREC No. 36-2 [~~36-1~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-2 [~~36-1~~] approved by the Texas Real Estate Commission in 2003 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.46. Standard Contract Form TREC No. 39-4 [~~39-3~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-4 [~~39-3~~] approved by the Texas Real Estate Commission in 2003 [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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 6, 2002.

TRD-200207257
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 465-3900

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22 TAC §537.36, §537.42

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

The Texas Real Estate Commission (TREC) proposes the repeal of §537.36 and §537.42, concerning standard contract forms, in connection with the anticipated adoption of revised contract forms. The forms adopted by reference in §537.36 and §537.42 are no longer needed as a result of consolidation of forms.

Section 535.36 concerns a form promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. A provision in the Farm and Ranch Contract that provided the parties a choice of using the addendum has been deleted. As none of the remaining promulgated contract forms reference the addendum, the form will no longer be needed.

Section 535.42 concerns a form promulgated for use as an addendum to be added to the promulgated forms of contracts as an agreement for mediation. All the promulgated contracts forms will have an agreement for mediation provision for the parties to choose whether to submit disputes regarding the contracts to alternative dispute resolution. Therefore, the mediation addendum is no longer needed.

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

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals, other than the costs of obtaining copies of replacement forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

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

The repeals are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§537.36. Standard Contract Form TREC No. 29-1.

§537.42. Standard Contract Form TREC No. 35-2.

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 6, 2002.

TRD-200207258
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 465-3900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners ("Board) proposes an amendment to §573.64, concerning Continuing Education Requirements. The section requires that a veterinarian annually acquire at least 17 hours of continuing education in veterinary medicine. The current section states that a person who successfully passes the State Board Licensing Examination may substitute the examination for the continuing education requirements of the person's "examination period." The phrase "examination period" is vague in the context of the section. The proposed amendment substitutes the phrase "the calendar year in which they were examined" for "examination period" to clarify the intent of the section.

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

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to clarify for veterinary license candidates the requirements for acquiring continuing education once the candidate passes the license examination. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, fax (512) 305-7556, and will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.306 which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.307 which pertains to continuing education requirements.

§573.64. Continuing Education Requirements.

(a) Requirements

(1) Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Licensing Examination shall be allowed to substitute the examination for the continuing education requirements of the calendar year in which they were examined [~~their examination period~~].

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

(2) (No change.)

(b) - (f) (No change.)

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

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

TRD-200207188
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 305-7563

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 40. MEDICAL TRANSPORTATION

The Texas Department of Health (department) proposes amendments to §§40.1, 40.101-40.103, 40.105-40.106, and 40.201, repeal of §§40.104, 40.301-40.304, 40.401-40.405, 40.501-40.502, 40.601-40.603 and new §40.301 concerning the Medical Transportation Program (MTP).

Specifically, the amendments, repeals and new section are required to add new definitions, correct terms, clarify language and delete references to information already contained in contract documents.

An amendment to §40.1 changes the term client(s) to recipient(s), eligible MTP client to prior authorized MTP recipient and individual contractor to individual volunteer contractor, changes references to the Chronically Ill and Disabled Children (CIDC) program to the Children with Special Health Care Needs (CSHCN) program, adds additional definitions, expands on definitions and deletes definitions contained in contract documents.

The amendments to §§40.101-40.103, and 40.105 expands on language, changes the term client(s) to recipient(s) and changes references to the Chronically Ill and Disabled Children (CIDC) program to the Children with Special Health Care Needs (CSHCN) program, adds language pertaining to partial reimbursement or advance funds and clarifies services to nursing facilities.

An amendment to §40.106 changes the term client to recipient, changes references to the Chronically Ill and Disabled Children (CIDC) program to the Children with Special Health Care Needs (CSHCN) program, and adds additional requirements not covered by the MTP.

An amendment to §40.201 changes the term client(s) to recipient(s), changes references to the Chronically Ill and Disabled Children (CIDC) program to the Children with Special Health

Care Needs (CSHCN) program, clarifies language in that if a service is denied, then the recipient shall be notified in accordance with Medicaid Uniform Fair Hearings Procedures by the MTP and adds an additional requirement to the recipients responsibilities.

New §40.301 pertains to individual volunteer contractors participation requirements and includes language from repealed §40.301.

Linda M. Altenhoff, D.D.S., Director, Texas Health Steps and Medical Transportation Division, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Altenhoff has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the sections will be improved compliance with the policies and procedures related to the provision of medical transportation services. There will be no effect or implications on micro businesses or small businesses. This was determined by the conclusion that the end process for obtaining and receiving services remains the same. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to David Autry, Director, Medical Transportation Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7519. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. PROGRAM OVERVIEW

25 TAC §40.1

The amendment is proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.1. Definitions of Terms.

The following words and terms, when used in the Medical Transportation Program (MTP) rules, shall have the following meanings, unless the content clearly indicates otherwise.

(1) (No change.)

(2) Adjacent county(ies) -- The county or counties that share a common county line or point with [~~next to~~] the recipient's [~~client's~~] county of residence.

(3) Advance funds -- Funds authorized by Regional MTP staff in advance of travel and provided to a recipient [~~client~~] or attendant for a medically-necessary health care service.

(4) Ambulance service -- A service paid through the Texas Medicaid Program's Claims Administrator in an emergency, or non-emergency situation in which transportation in a vehicle other than an ambulance could endanger the recipient's health.

(5) [~~(4)~~] Attendant -- An individual, translator, other assistant 18 years of age or older or service animal that accompanies a prior authorized MTP recipient to provide necessary assistance to and from the vehicle and the specified medical facility [~~an eligible client~~].

(6) [~~(5)~~] Batch -- A group of mass-transit tickets or tokens with one unique confirmation number.

(7) [~~(6)~~] Cancellation -- Verbal or written notification from a recipient [~~client,~~] or a recipient's [~~client~~] advocate [~~, or contractor~~] prior to the scheduled medical transportation service which indicates that the particular service is not needed.

(8) [~~(7)~~] Certification Period -- A period of time for which the recipient [~~service~~] is certified for service.

(9) [~~(8)~~] Children with Special Health Care Needs (CSHCN) [~~Chronically Ill and Disabled Children (CSHCN-CIDC)~~] -- A department program funded with general revenue and federal funds. Services for eligible children include early identification, diagnosis and evaluation, resulting in early health care intervention.

(10) [~~(9)~~] Contractor -- A [~~An individual, a~~] for-profit business, a non-profit organization, or a governmental unit that has entered into a legally binding contract with the department to provide authorized MTP transportation services, advance funds, meals and/or lodging to prior authorized MTP recipients [~~eligible clients~~].

(11) [~~(10)~~] Curb-to-curb service -- Transportation from curb at origin to curb at destination. This service includes providing assistance, as required, to passengers entering and exiting the vehicle.

(12) Demand-response -- Transportation that involves using dispatched vehicles in response to requests for individual or shared one-way trips.

(13) [~~(11)~~] Department -- Texas Department of Health. The State agency that operates the Medical Transportation Program [~~under Title XIX of the Social Security Act~~].

(14) [~~(12)~~] Dependent care -- Necessary care for a child or disabled adult.

(15) [~~(13)~~] Destination -- The place or point to which a recipient [~~client~~] has been authorized by MTP to travel.

(16) [~~(14)~~] Door-to-door service -- Transportation from the door of the trip origin to the door of the trip destination as authorized by Regional MTP staff. This service includes providing assistance, as required, to passengers entering and exiting the vehicle.

[~~(15) Eligible MTP client -- A person enrolled in Medicaid, Children with Special Health Needs (CSHCN-CIDC), or the Transportation for Indigent Cancer Patients (TICP) programs.~~]

(17) [~~(16)~~] Fraud -- Deliberate misrepresentation or intentional concealment of information in order to obtain services or payment for services to which a person or contractor is not entitled.

(18) [~~(17)~~] Health [~~-~~] Care Provider's Statement of Need -- MTP Form 3113 or equivalent [~~A written statement or MTP form~~] submitted by a health care provider which documents the recipient's [~~client's~~] need for health care services and/or special transportation accommodations.

[~~(18) Hotel -- An establishment that provides overnight lodging.~~]

(19) Individual Volunteer Contractor (IVC) [~~contractor (IC)~~] -- An individual [~~A person~~] who has an approved service agreement [~~contracts~~] with the department for mileage reimbursement at a prescribed rate to provide transportation for a prior authorized MTP recipient [~~an eligible client~~] to a prior authorized [~~covered~~] health care service.

(20) Limited [~~Lock-in~~] -- An action taken by the Texas Department of Human Services (TDHS) [~~department~~] to limit a Medicaid recipient's [~~restrict the individual's~~] choice of providers.

(21) Lodging establishment -- An establishment such as a hotel, motel, charitable home or hospital that provides overnight lodging.

(22) [~~(21)~~] Mass transit -- Transportation that is subsidized by sales taxes or Federal Transit Administration funds and provided to the general public within a specified [~~predetermined~~] local area.

(23) [~~(22)~~] Medicaid -- A health care program provided to eligible individuals under 42 U.S.C. §1396a *et seq*.; 42 C.F.R. 431.53;[~~Title XIX of the federal Social Security Act and the~~] Texas Human Resources Code, Chapters 22 and [~~Chapter~~] 32.

(24) [~~(23)~~] Medicaid-allowable service -- A service covered under the State's Medicaid Plan [~~for which a client is eligible~~]. This includes health care services that are provided to the recipient [~~client~~] by a charitable organization but not billed to Medicaid as well as value-added services provided by a Medicaid managed care plan to a Medicaid-enrolled member.

(25) [~~(24)~~] Medically-necessary -- Services [~~services~~] that are:

(A) reasonably necessary to: prevent illness(es) or medical condition(s); maintain function or to slow further functional deterioration; provide early screening, intervention, care, and/or provide care or treatment for eligible recipients who have medical condition(s) that cause suffering or pain, physical deformity or limitations in function, or that threaten to cause or worsen a disability, illness or infirmity, or endanger life;

(B) provided at appropriate locations and at the appropriate levels of care for the treatment of the medical condition(s);

(C) consistent with health care practice guidelines and standards endorsed by professionally recognized health care organizations or governmental agencies;

(D) consistent with the diagnosis(es) of the condition(s); and

(E) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency.

(26) [~~(25)~~] Medical Transportation Program (MTP) -- A program which provides prior authorization for non-emergency transportation services for recipients to and from health care services for categorically eligible Medicaid recipients [~~persons~~] enrolled in Medicaid, CSHCN[~~-CIDC~~], or TICP who have no other means of transportation to a prior authorized [~~the~~] health care service.

(27) [~~(26)~~] Minor -- An individual under 18 years of age who has never been married or emancipated by court ruling.

(28) [~~(27)~~] No show --

(A) a recipient [~~client~~] who does not respond within ten minutes of the time the contractor arrives at the designated pick-up point and scheduled time and announces its presence; or

(B) a contractor who fails to arrive at the designated pick-up point and time.

(29) [~~(28)~~] One-way trip -- Transportation of a passenger from point-of-origin to destination.

[~~(29) On-time -- Contractor arrives at the health care facility no more than one hour prior to the MTP client's scheduled medical appointment time and returns for pick up no later than one hour after the scheduled return trip time.~~]

(30) Origin -- The location at which the contractor is authorized to pick up the recipient [~~client~~].

[~~(31) Overnight stay -- A service enabling a client to remain beyond the date of MTP transportation at a health care facility located outside the client's city of residence.~~]

(31) [~~(32)~~] Passenger assistance -- Assistance which enables a recipient [~~client~~] to walk, enter or exit a vehicle, or transfer from a wheelchair. This does not include lifting or carrying a person.

(32) [~~(33)~~] Prior authorization -- Authorization or approval for the delivery of transportation [~~certain~~] services obtained from the department [~~or its designee~~] before the services are rendered. [~~Prior authorized services may be limited in duration, scope, and amount. Services provided beyond those authorized are not reimbursable by MTP. If a prior authorization is limited in duration, scope or amount, a separate request must be submitted and approved for any additional services.~~]

(33) Prior authorized MTP recipient -- A recipient, as authorized by the department, who has been identified by the Texas Department of Human Services (TDHS) as eligible for Medicaid services under a specific category, Children with Special Health Care Needs (CSHCN) or the Transportation for Indigent Cancer Patients (TICP) program, who have no other means of transportation to health care services.

(34) Priority Trips -- Prior-authorized trips that must be provided on the original authorized date and time.

(35) [~~(34)~~] Reasonable transportation -- Transportation [~~within a client's county of residence, or to an adjacent county,~~] using the most cost-effective transportation that meets the recipient's [~~client's~~] medical needs: [~~.~~]

(A) within a recipient's local community, county of residence, or county adjacent to a recipient's county of residence where the recipient wishes to maintain an ongoing relationship or establish a relationship with a health care provider of his or her choice;

(B) to and from a county beyond the county adjacent to the recipient's county of residence when determined by the department to be reasonably close to obtain medically necessary, health program allowable services from a specialist when appropriate medical services are not available as specified in subparagraph (A) of this paragraph; or

(C) to a provider or facility within a designated Medicaid managed care service delivery area.

(36) [~~(35)~~] Rescheduled authorized trips -- Prior-authorized [~~Authorized~~] trips postponed by a contractor because of scheduling conflicts, inclement weather conditions [~~and/~~] or seating capacity limitations.

(37) [~~(36)~~] Retroactive authorizations [~~payments~~] -- Authorizations provided [~~Payments made to a contractor~~] for eligible services which would have been authorized had they been requested prior to the service.

(38) [~~(37)~~] Routine medical transportation -- Prior-authorized [~~Authorized~~] medical transportation trips that do not have priority status [~~of eligible clients~~] to and/or from the nearest facility where health care needs will be met.

(39) [~~(38)~~] Same-day service -- An urgent request prior authorized by MTP staff.

[(39) Sanctions -- Disciplinary action against an MTP contractor for validated infractions of program rules, policies, or contract terms.]

[(40) Scheduling -- Authorized medical transportation arranged for clients by contractors to ensure the client's timely arrival at health care services on or before the scheduled medical appointment.]

(40) [(41)] Service animal -- A guide dog, [or a] signal dog, or other animal individually trained to provide assistance to an individual with a disability.

(41) [(42)] Sexual harassment -- Unwelcome sexual advances, requests for sexual favors, or other unwanted verbal or physical conduct of a sexual nature directed toward an individual [a person] by another individual during the provision of MTP services.

(42) [(43)] Special medical transportation -- Medical transportation to and/or from a recipient's county of residence to a health care facility beyond the adjacent county where health care needs will be met and the appropriate prior authorized service(s) are not available locally [adjacent to the client's county of residence].

(43) Special needs -- A transportation service request that requires the use of a vehicle equipped with a ramp or a mechanical lift to provide the recipient with a means of accessing the vehicle.

[(44) Subcontractor -- An individual, for-profit business, non-profit organization, or governmental unit that has entered into a legal contract with the department's MTP contractor to provide transportation services, advance funds, meals, and/or lodging to eligible clients authorized by Regional MTP staff.]

(44) [(45)] Transportation for Indigent Cancer Patients (TICP) Program -- A state-funded program that provides medical transportation services to recipients [clients] diagnosed with cancer or a cancer-related illness and who meet certain residency and financial criteria.

[(46) Urgent -- A request for same-day transportation service.]

[(47) Usual and customary charge -- The fee a contractor customarily charges the general public for a service.]

[(48) Workday -- Normal department operating hours from 8:00 a.m. - 5:00 p.m. Monday through Friday with the exception of state and federal holidays.]

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

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SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

25 TAC §§40.101- 40.103, 40.105, 40.106

The amendments are proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendments affect the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.101. Eligibility.

(a) The following prior authorized MTP recipients are eligible to receive reasonable [medical] transportation to medical services if no other means of transportation are available, the mode of transportation is the most cost-effective mode available that does not endanger the recipient's health and the facility is reasonably close to the prior authorized health care service that meets the recipient's medical needs:

(1) Current Medicaid recipients authorized by the department and identified by the Texas Department of Human Services (TDHS) as eligible for Medicaid services under a specific category [clients who are enrolled in Medicaid];

(2) CSHCN[-CIDC] recipients [clients]; and

(3) TICP recipients [clients].

(b) Transportation for Indigent Cancer Patients (TICP) - To be [determined] eligible [by the department] for participation in the TICP Program, the recipient [client]:

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

(9) has zero income and shall therefore submit written verification [letters] from two family members or individuals who can [that] attest that the household receives no monthly earned or unearned income [to the applicant's current financial status]. Unearned income refers to monetary assistance provided by family, friends, charitable organizations, and such given to the recipient for household expenses;

(10) - (11) (No change.)

§40.102. Program Services.

Medical Transportation Program (MTP) services must be prior authorized by Regional MTP staff. MTP services include the following:

(1) reasonable transportation of an prior authorized MTP recipient [eligible client] to and/or from a prior authorized [covered] health care facility where health care needs will be met [service];

(2) special medical transportation to a health care facility when one of the following conditions is met:

(A) (No change.)

(B) the recipient [client] provides Regional MTP staff with a Health Care Provider's Statement of Need and the Health Care Provider's Statement of Need or equivalent is reviewed and the service is determined reasonable.[;]

(3) transportation for an attendant(s); if the health [-] care provider documents the need, the recipient [client] is a minor, or a language or other barrier to communication or mobility exists that necessitates such assistance;

(4) transportation for a service animal when accompanying a recipient [client];

(5) retroactive reimbursement for up to three months of reasonable transportation, meals and lodging if the recipient [~~client~~] is a new recipient to MTP and is eligible under all program [~~health-eligibility~~] requirements. Retroactive reimbursement will begin on the date of the request for retroactive reimbursement;

(6) (No change.)

(7) reimbursement or advance funds for an eligible child and attendant(s) for meals and lodging when the health care service requires the child to remain overnight . If the child remains overnight for six consecutive months [~~. After six months~~], the recipient [~~client~~] or responsible party must provide proof of residency by providing:

(A) (No change.)

(B) copy of a utility bill under the recipient's [~~client's~~] or responsible party's (if recipient [~~client~~] is a child) name; or

(C) (No change.)

(8) partial reimbursement or advance funds for a prior authorized MTP recipient and attendant(s) for transportation beyond the approved destination. Partial reimbursement is limited to the amount that would have been paid to the approved destination for transportation permitted under paragraph (1) of this section.

§40.103. Program Processes.

To ensure transportation for prior authorized MTP recipients [~~eligible clients~~] to a health care facility where health care needs will be met:

(1) a request for routine medical transportation must be received by the Regional MTP staff at least two working days [~~workdays~~] in advance of the recipient's prior authorized [~~client's~~] health care service appointment;

(2) a request for special medical transportation must be received by the Regional MTP staff at least five working days [~~workdays~~] in advance of the recipient's prior authorized [~~client's~~] health care service appointment;

(3) exceptions to paragraphs (1) and (2) of this section may be granted by the Regional MTP manager or designee when the circumstances have been determined by the Regional MTP manager or designee to be beyond the recipient's [~~client's~~] control. The exception will be documented in the recipient's [~~client's~~] record;

(4) recipients with [~~clients with a chronic health condition, which requires~~] recurring visits to a health care provider[~~,~~] may receive multiple mass transit tickets or may have more than one transportation appointment authorized in advance;

(5) an individual volunteer contractor(s) may receive reimbursement that exceeds the amount paid to other transportation contractors in their area for transportation to a similar facility when the facility is the recipient's [~~client's~~] choice and/or the facility is prior authorized [~~deemed~~] by the department as [~~to be~~] appropriate for the prior authorized health care service required;

(6) - (7) (No change.)

§40.105. Program Limitations.

Recipients [~~Clients~~] are not eligible to receive medical transportation services under the following circumstances:

(1) to and from a day activity [~~the intended destination is a nursing facility~~], a personal care home or state institution, or a facility participating in another Title XIX program for which [~~and~~] the reimbursement rate structure [~~of that program~~] includes transportation funds;

(2) the intended destination is a nursing facility;

(3) [~~(2)~~] the recipient [~~client~~] is an inpatient in a health care facility;

(4) [~~(3)~~] the recipient [~~client~~] is under 18 years of age and not accompanied by a parent or legal guardian, unless one of the following conditions exists:

(A) the recipient [~~client~~] is aged 15 through 17 years of age and presents the parent's or legal guardian's signed, written consent for the transportation services to the Regional MTP office or the transportation contractor; or

(B) the treatment to which the minor is being transported is such that the law extends confidentiality to the minor for this treatment;

(5) [~~(4)~~] the recipient [~~client~~] or another person or entity providing care for the recipient [~~client~~] receives direct payment of worker's compensation benefits, U. S. Department of Veterans Affairs benefits, or other third-party resources for transportation to prior authorized [~~covered~~] services on the recipient's [~~client's~~] behalf;

(6) [~~(5)~~] the recipient [~~client~~] is on limited [~~lock-in~~] status [~~and is limited to a specific health care provider~~], unless the [~~lock-in~~] provider has made the referral or the recipient [~~client~~] requests family planning services;

(7) [~~(6)~~] TICP diagnostic visits and/or cancer or cancer-related treatments that are provided out-of-state;

(8) [~~(7)~~] the recipient [~~client~~] and/or attendant intentionally, knowingly, or recklessly boards the vehicle carrying an illegal knife, a club, handgun or other weapon, as defined in Penal Code, §46.01, on or about his or her person;

(9) [~~(8)~~] a third-party, such as a hospital or hotel, provides transportation, meals, and/or lodging at no charge for a recipient [~~client~~] and attendant, for a particular appointment; or

(10) [~~(9)~~] an attendant does not accompany the recipient [~~client~~] on the MTP-requested trip when a Health [~~-~~] Care Provider's Statement of Need, Form 3113 or equivalent, is on file stating the recipient [~~client~~] requires an attendant(s).

§40.106. Program Exclusions.

The following transportation services are not covered by the Medical Transportation Program:

(1) transportation of deceased recipients [~~clients~~];

(2) transportation of individuals who do not qualify for a state or federal medical assistance program served by the MTP program;

(3) transportation of individuals to services which are not covered by the applicable state or federal medical assistance program under which the recipient qualifies;

(4) [~~(2)~~] advance funds, meals, and/or lodging services to a recipient [~~client~~] 21 years of age or older, unless the individual is a CSHCN [~~-CIDC~~] recipient [~~client~~] diagnosed with cystic fibrosis;

(5) [~~(3)~~] reimbursement for additional travel costs when a recipient [~~client~~] elects to seek care at a more remote facility that is not supported on a Health Care Provider's Statement of Need, Form 3113 or equivalent and prior [~~than the one~~] authorized by Regional MTP staff;

(6) [~~(4)~~] medical care while recipients [~~clients~~] are being transported;

(7) [~~(5)~~] emergency or non-emergency ambulance service;

(8) [~~(6)~~] passenger assistance beyond that which is necessary to ensure that recipients [~~clients~~] enter and leave vehicles safely, unless the contractor's contract states that door-to-door service is provided;

(9) [~~(7)~~] reimbursement for transportation services provided by an individual volunteer contractor before the date that Regional MTP staff approved the initial request to provide services from the individual volunteer contractor, unless an exception for retroactive reimbursement has been made and is documented by the Regional MTP staff; and

(10) [~~(8)~~] transportation services for family members not previously authorized for the specific trip by Regional MTP staff.

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

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25 TAC §40.104

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

The repeal is proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeal affects the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.104. Additional Transportation Connected with an Authorized Trip.

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

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SUBCHAPTER C. CLIENT RIGHTS

25 TAC §40.201

The amendment is proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.201. Recipient [~~Client~~] Rights and Responsibilities.

(a) Recipient [~~Client~~] Rights.

(1) Nondiscrimination. The recipient [~~client~~] has a right to receive services in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000d, et seq.; §504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794; the Americans with Disabilities Act of 1990, 42 U.S.C.A. §12101, *et seq.*; and all amendments to each, and all requirements imposed by the regulations issued pursuant to these Acts, in particular 45 CFR Part 80 (relating to race, color, national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

(2) Abuse report. Recipients [~~Clients~~] should report verbal or physical abuse or sexual harassment committed by other recipients [~~clients~~] or passengers, contractor employees, or department staff to Regional MTP staff or Regional Management staff upon arrival at the recipient's [~~client's~~] destination.

(3) Denial notification. If a service is [~~services are~~] denied, Regional MTP staff shall notify the recipient in accordance with Chapter 1 [~~client verbally and in writing no less than 30 days before the department intends to terminate services. This notification must contain information listed in Chapter 36~~], Subchapter C, §1.41 [~~§36.21~~] of this title (relating to Medicaid Uniform [~~Recipient Notice and~~] Fair Hearings Procedures [~~Request~~]). This recipient notification does not apply to transportation services not covered [~~clients~~] under §40.106 of this title [~~chapter~~] (relating to Program Exclusions).

(4) Appeal request. A recipient [~~client~~] whose services have been denied may request an administrative review by the Regional MTP Manager. A second administrative review may be conducted by the MTP Program Director. If the recipient is still dissatisfied, the recipient [~~or~~] may appeal the administrative review decision or the service denial by requesting a fair [~~formal~~] hearing. A [~~Unless otherwise specified, a~~] request for a fair [~~formal~~] hearing must [~~should~~] be in writing and mailed or hand-delivered to the appropriate Regional MTP office.

(b) Recipient [~~Client~~] Responsibilities.

(1) When a recipient [~~client~~] or responsible adult requests transportation, he/she must provide Regional MTP staff with the following information:

(A) recipient [~~client~~] name, address, and, if available, the telephone number;

(B) Medicaid, TICP or CSHCN[~~-CIDC~~] recipient [~~client~~] identification number (if applicable) or [~~,~~] Social Security number, and date of birth;

(C) - (G) (No change.)

(H) affirmation that advance funds are needed in order for the recipient [~~client~~] to access [~~travel to a~~] health care services [~~facility, if applicable~~];

(I) recipient must reimburse the department for any advance funds, and any portion thereof, that are not used for the specific prior authorized service.

(2) Recipients [~~Clients~~] must refrain from verbal and/or physical abuse or sexual harassment toward another recipient [~~client~~] or passenger, contractor's employees, or department employees while requesting or receiving medical transportation services.

(3) Recipients [~~Clients~~] must safeguard all bus tickets and/or tokens from loss and theft and must return unused tickets or tokens to the Regional MTP office issuing the tickets or tokens.

(4) Recipients [~~Clients~~] who receive mass-transit bus tickets or tokens must complete the department's Verification of Travel to Health Care Services by Mass Transit, Form 3111 [~~verification form~~]. Recipients [~~Clients~~] must return this verification form prior to their next request for tickets or tokens. A letter from the health care provider verifying delivery of services may be substituted for the disbursement of mass transit tickets or tokens verification form. Exceptions to this documentation may be granted by a Regional MTP Manager or [~~MTP-designated~~] supervisor when circumstances occur that are beyond the recipient's [~~client's~~] control. Exceptions will be documented in the recipient's [~~client's~~] record.

(5) Recipients [~~Clients~~] must not use authorized medical transportation for purposes other than travel to and from prior authorized [~~covered~~] health care services.

(6) If the recipient [~~client~~] does not need to use the authorized transportation services, the recipient [~~client~~] or the responsible adult should contact the Regional MTP staff to cancel the particular trip no less than four hours [~~within 48 hours~~] prior to the time of the authorized trip.

(7) Recipients [~~Clients~~] who receive advance funds for meals, lodging, and/or travel must return a completed Individual Volunteer Contractor (IVC) [~~(IC)~~] Service Record verifying services were provided, prior to receiving future advance funds or reimbursements. [~~A letter from the health care provider verifying services were provided may be substituted for the IC service record. Exceptions to this documentation may be granted by a Regional MTP manager when circumstances occur that are beyond the client's control. Exceptions will be documented in the client's record.~~]

(8) Recipients [~~Clients~~] must cancel requests for advance funds or lodging when not needed and must refund any disbursed advance funds to the department.

(9) Recipients [~~Clients~~] must provide appropriate receipts when seeking reimbursement for lodging.

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

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SUBCHAPTER D. CONTRACTOR PARTICIPATION

25 TAC §§40.301 - 40.304

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

The repeals are proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeals affect the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.301. Transportation Contractor Participation Requirements.
§40.302. Subcontractors.
§40.303. Contractor Accident Reports.
§40.304. Contractor Reporting Abuse.

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

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40 TAC §40.301

The new section is proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The new section affects the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.301. Individual Volunteer Contractor Participation Requirements.

(a) To participate in MTP, all individual volunteer contractors must:

(1) sign an Individual Volunteer Contractor Agreement with the department to acquire participation status; and

(2) have and maintain a current driver's license, current vehicle insurance, current vehicle inspection sticker and current vehicle license tags and meet all requirements of the individual volunteer contractor agreement to participate as an individual volunteer contractor.

(b) The department may reject any request for participation in MTP and cancel any existing agreement at the department's discretion.

(c) The Individual Volunteer Contractor must refund to the department any funds to which the IVC is not entitled to for any reason.

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

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SUBCHAPTER E. PAYMENT PROCEDURES AND RECORDKEEPING

25 TAC §§40.401 - 40.405

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

The repeals are proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeals affect the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.401. Contractor Billing.
§40.402. Gifts and Contractor Additional Charges.
§40.403. Contractor Recordkeeping and Accounting Records.
§40.404. Confidentiality of Records.
§40.405. Audits.

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

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SUBCHAPTER F. MONITORING AND EVALUATION

25 TAC §40.501, §40.502

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

The repeals are proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeals affect the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.501. Monitoring and Evaluation of Contractors.
§40.502. Contractor Compliance.

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

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SUBCHAPTER G. CONTRACT TERMINATION AND SANCTIONS

25 TAC §§40.601 - 40.603

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

The repeals are proposed under the Human Resources Code, Chapter 22 and Chapter 32; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The repeals affect the Human Resources Code, Chapters 22 and 32; and Government Code, Chapter 531.

§40.601. Expiration or Termination of Contract.
§40.602. Sanctions on Contractor.
§40.603. Contractor Rights.

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.56

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §411.56, governing memorandum of understanding (MOU) on coordinated services to children and youths of Chapter 411, Subchapter B, concerning interagency agreements.

Senate Bill 1468 (77th Legislative Session) repealed Family Code, §264.003, which required TDMHMR and seven other health and human services agencies to adopt by rule the Memorandum of Understanding for Coordinated Services to Children and Youths. In §411.56, TDMHMR adopted by reference a rule of the Texas Department of Protective and Regulatory Services (TDPRS), 40 TAC §736.701 (relating to Memorandum of Understanding for Coordinated Services to Children and Youths). The MOU remained in effect until the new MOU required by the Government Code, §531.055, (relating to Memorandum of Understanding on Services for Persons Needing Multiagency Services) was signed by the final party in early March 2002.

Cindy Brown, chief financial officer, has determined that for each year of the first five year period the proposed repeals are in effect, enforcing or administering the sections do not have foreseeable economic implications relating to cost or revenue of the state or local government because the repeals don't impose measurable costs on any person or entity.

David Rollins, acting director, Long Term Services and Supports, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is compliance with current law which repeals the statutory provision that required the old MOU be adopted by rule and replaces it with a statutory provision in the Government Code which requires a similar MOU but does not require that it be adopted by rule. It is not anticipated that the repeal will have an adverse economic effect on small business or micro-business because they do not impose any measurable costs on any person or entity. It is not anticipated that there will be an economic cost to persons required to comply with the repealed sections. It is not anticipated that the repealed sections will affect a local economy.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12669, Austin, Texas 78711-2668, within 30 days of publication.

The existing sections are proposed for repeal under the Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and Senate Bill 1468 (77th Legislative Session) that repealed Family Code, §264.003. The provision required TDMHMR to adopt the MOU by rule.

The repealed section affects the Family Code, §264.003.

§411.401. Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths.

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 7, 2002.

TRD-200207261
Andrew Hardin
Chairman, Texas Mental Health and Mental Retardation Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 206-4516

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 9. TRAINING

The Texas Commission on Environmental Quality (commission) proposes an amendment to 9.1. The commission also proposes new §§9.10 - 9.17.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Government Code, Chapter 656, Subchapter C, mandates that state agencies adopt rules relating to the eligibility of employees for training and education supported by the agency and the obligations assumed by employees upon receiving the training and education. It also authorizes agencies to use public funds to provide job-related training and education for its employees and to require employees to attend job-related training. Additionally, it identifies the specific purposes of agency training and education programs, and mandates that agencies adopt policies that relate to an employee's duties following participation in an education assistance program.

SECTION BY SECTION DISCUSSION

The proposed amendments to Chapter 9, Training for Commissioners, include changing the title of the chapter to "Training" to broaden the scope of the chapter by including training for commissioners and the agency's employee training and education programs. Proposed new Subchapter A, Training for Commissioners, contains the existing sections of Chapter 9. Proposed new Subchapter B, Employee Training and Education, establishes the agency's training and education programs.

Subchapter A, Training for Commissioners

The proposed amendment to §9.1, Purpose, changes the name of the commission from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

Subchapter B, Employee Training and Education

The proposed new §9.10, Purpose, establishes the purpose of this subchapter, which is to govern procedures applicable to the employee training and education assistance programs of the agency.

The proposed new §9.11, Definitions, establishes definitions for words and terms used in this subchapter.

The proposed new §9.12, Scope, identifies the types of opportunities available through the employee training and education assistance programs.

The proposed new §9.13, Eligibility, identifies eligibility requirements for participating in employee training and education assistance programs.

The proposed new §9.14, Obligations, specifies the obligations that employees assume for participating in the employee training and education assistance programs.

The proposed new §9.15, Reimbursement, identifies the sources of funding for the employee training and education assistance programs.

The proposed new §9.16, Training Records, identifies responsibilities for maintaining a centralized training management system for all employees, as well as individual training records for employees.

The proposed new §9.17, At-Will Employment, establishes that approval to participate in agency training and education programs does not affect an employee's at-will employment status.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendment and new sections are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rulemaking. The proposed rulemaking is procedural in nature and only affects the commission.

The proposed amendments would formalize existing training practices and regulations within the commission, and update references to the commission's name to reflect the name change to the Texas Commission on Environmental Quality. No significant fiscal implications are anticipated for the commission or any other unit of state or local government due to implementation of the proposed rulemaking.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment and new sections are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rulemaking will be assurance that funds expended for training and education of commission employees will be in accordance with legislative mandates.

The proposed rulemaking would formalize existing training practices and regulations within the commission, and update references to the commission's name to reflect the name change to the Texas Commission on Environmental Quality. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendment and new sections, which would formalize existing training practices and regulations within the commission, and update references to the commission's name to reflect the name change to the Texas Commission on Environmental Quality. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure and is intended to simply implement the State Employees Training Act. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific primary purpose of the proposed rulemaking is to revise commission rules to comply with Texas Government Code, Chapter 656, Subchapter C. This proposed rule will substantially advance this stated purpose by providing specific procedures applicable to the employee training and education assistance programs of the agency. Accordingly, promulgation and enforcement of the rule will not burden private real property. Further, as explained in this section, the proposed rule does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-067- 009-AD. Comments must be received by 5:00 p.m., December 23, 2002. For

further information, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

SUBCHAPTER A. TRAINING FOR COMMISSIONERS

30 TAC §9.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendment implements Texas Government Code, §656.048, which requires state agencies to adopt rules relating to training and education.

§9.1. Purpose.

This subchapter [~~chapter~~] governs procedures applicable to the training of commissioners of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] appointed on or after January 1, 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 November 7, 2002.

TRD-200207287
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 239-5017

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SUBCHAPTER B. EMPLOYEE TRAINING AND EDUCATION

30 TAC §§9.10 - 9.17

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and the obligations assumed by the administrators and employees on receiving the training and education.

The proposed new sections implement Texas Government Code, §656.048, which requires state agencies to adopt rules relating to training and education.

§9.10. Purpose.

(a) This subchapter governs procedures applicable to the employee training and education programs of the agency.

(b) The commission encourages the professional development of its employees through job-related training and education assistance programs that are designed to:

(1) prepare employees for technological and legal developments;

(2) increase employees' work capabilities; and

(3) increase employees' professional and technical competence.

§9.11. Definitions.

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

(1) Education assistance -- Reimbursement of specific costs for job-related learning opportunities provided by universities, colleges, or other institutions of higher learning.

(2) In-service training and education -- Job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors.

(3) Out-of-agency staff development -- Workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency either within or outside the state.

§9.12. Scope.

Employee training and education includes two components: the employee training program and the education assistance program.

(1) The employee training program includes the full range of training opportunities provided through in-service training and education as well as out-of-agency staff development opportunities.

(A) In-service training includes, but is not limited to:

(i) core curricula courses identified by the executive director for completion by all employees to ensure compliance with federal and state mandates, as well as critical agency policies and procedures;

(ii) technical courses that satisfy technical knowledge and skill requirements for effective job performance in a specific classification series;

(iii) computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications;

(iv) staff development courses that satisfy general knowledge and skill requirements for effective job performance in diverse classification series; and

(v) management development courses that satisfy knowledge and skill requirements for effective job performance in supervisory, managerial, and executive positions.

(B) Out-of-agency staff development includes, but is not limited to, workshops, seminars, institutes, training sessions, and other programs or activities offered outside the agency either within or outside the state.

(C) The employee training program encompasses training delivered via a variety of media including, but not limited to, computer-based, videotape, Internet-based, satellite-broadcast, webcast, and instructor-led.

(2) The education assistance program provides out-of-agency staff development opportunities. It includes courses

provided through a university, college, or other institution of higher learning via a variety of delivery media, such as instructor-led or Internet-based.

§9.13. Eligibility.

(a) Employee training program. All full-time employees are eligible to participate in the agency's training program to increase their job-related knowledge and skills, without regard to race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status.

(b) Education assistance program. Full-time employees may participate in the agency's education assistance program without regard to the employee's race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status, if they meet the following eligibility requirements as set forth in the agency's policies:

(1) tenure requirement;

(2) performance requirements; and

(3) conduct requirements.

§9.14. Obligations.

Employees who participate in the agency's training and education programs are obligated to comply with agency policies and procedures regarding these programs.

§9.15. Reimbursement.

(a) Employee training program.

(1) Funding for employee training is provided through the agency's central training account or the employee's respective division.

(2) The employee's respective division funds travel-related expenses for training participation.

(b) Education assistance program. The employee's respective division funds reimbursement of specific tuition-related expenses that have been approved by the division director. To qualify for reimbursement, courses requested by the employee must be provided through an accredited institution of higher learning and:

(1) directly related to improving specific knowledge and skills;

(2) related to essential job functions of the current or prospective position;

(3) needed for a special job assignment; or

(4) required for a career ladder promotion.

§9.16. Training Records.

(a) The Training Academy shall maintain training records for all agency employees via an automated training management system.

(b) Supervisors shall maintain individual training records for their employees that include training not provided through the Training Academy.

§9.17. At-Will Employment Status.

Approval to participate in the agency's training and education programs shall not in any way affect an employee's at-will status. Participation in these programs shall not constitute a guarantee or indication of future employment in a current or prospective position.

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 7, 2002.

TRD-200207288
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 239-5017

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CHAPTER 10. COMMISSION MEETINGS

30 TAC §10.7

The Texas Commission on Environmental Quality (commission) proposes an amendment to §10.7.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Existing §10.7(a) provides that the chief clerk shall make audio recordings of commission meetings which shall serve as minutes, and that the chief clerk shall keep all recordings in the commission's permanent records. Under Texas Government Code, §551.021(a), a governmental body is required to prepare and keep minutes or make a tape recording of each open meeting of the governmental body. Because of concerns over the feasibility of retaining audio recordings as permanent records, the commission proposes to amend the existing rule requiring audio recordings. Rather than requiring audio recordings to serve as the minutes, the proposal would require the chief clerk to prepare written minutes of each commission open meeting.

Texas Government Code, §551.021(b), requires that the minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken. The commission proposes to amend §10.7(a) to incorporate this statutory language. The proposal would also require that the minutes be kept in accordance with the agency's records retention schedule. Although the proposed amendment changes the media of the minutes, the commission proposes to require the agency to make an audio recording of each commission open meeting and retain the recording for ten years unless a longer period is required by Texas Government Code, §441.187(b). Section 441.187(b) provides that a state record may not be destroyed if any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the record is initiated before the expiration of the applicable retention period until completion of the action and resolution of all issues that arise from the action.

SECTION DISCUSSION

The proposed amendment to §10.7(a) deletes the language requiring the chief clerk to make audio recordings of commission meetings, which serve as the minutes, and deletes the language requiring the chief clerk to keep all recordings in the commission's permanent records. This deleted language is proposed to be replaced with language requiring the chief clerk to prepare written minutes of each commission open meeting, which shall state the subject of each deliberation and indicate each vote, order, decision, or other action taken. Section 10.7(a) is also proposed to be amended to state that the general counsel is authorized to approve the minutes, which shall be kept in accordance with the agency's records retention schedule. Existing §10.7(b) is proposed to be redesignated as subsection (c), in order to accommodate the addition of proposed subsection (b), which states that the agency shall make an audio recording of each commission open meeting which shall be retained for ten years after creation unless a longer retention period is

required by Texas Government Code, §441.187(b). Finally, proposed subsection (c) would change "chief clerk" to "agency" in the first sentence, to more accurately reflect duties and responsibilities.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed amendment. The proposed amendment is procedural in nature and only affects the commission.

The proposed amendment would require the commission to maintain written minutes of each commission open meeting, in lieu of the existing method utilizing audio tapes. The written minutes would be maintained in accordance with the commission's records retention schedule. Audio recordings of each commission open meeting will still be retained for at least ten years, but will not be considered the official minutes of the meeting. No significant fiscal implications are anticipated for the commission or any other unit of state or local government due to implementation of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be access to the minutes for commission open meetings via written or audio recordings.

The proposed amendment would require the commission to maintain written minutes of each commission open meeting, in lieu of the existing method utilizing audio tapes. The written minutes would be maintained in accordance with the commission's records retention schedule. Audio recordings of each commission open meeting will still be retained for at least ten years, but will not be considered the official minutes of the meeting. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendment, which would require the commission to maintain written minutes of each commission open meeting, in lieu of the existing method utilizing audio tapes. The written minutes would be maintained in accordance with the commission's records retention schedule. Audio recordings of each commission open meeting will still be retained for at least ten years, but will not be considered the official minutes of the meeting. No fiscal implications are anticipated for any small or micro-business due to implementation of the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning minutes and recordings of commission meetings, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact analysis is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because federal law does not set standards for the media of commission minutes. This proposal does not exceed an express requirement of state law because it is authorized by Texas Government Code, §551.021. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because no delegation agreement addresses the media of commission minutes. This proposal does not adopt a rule solely under the general powers of the agency, but rather under Texas Government Code, §551.021. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to minutes and recordings of commission meetings. This proposed rule will substantially advance this stated purpose by providing specific procedural requirements relating to making and keeping written minutes and recordings of commission meetings. Accordingly, promulgation and enforcement of the rule will not burden private real property. Further, as explained in this section, the proposed rule does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.) and the commission

rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. The proposed action concerns only the procedural rules of the commission, is not substantive in nature, does not govern or authorize any actions subject to the CMP, and is not itself capable of adversely affecting a coastal natural resource area (31 TAC Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq.*). Interested persons may submit comments on the consistency of the proposed amendment with the CMP during the public comment period.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-067-009-AD. Comments must be received by 5:00 p.m., December 23, 2002. For further information contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Government Code, §551.021, which requires a governmental body to prepare and keep minutes or make a tape recording of each open meeting of the body.

The proposed amendment implements TWC, §5.103 and §5.105; and Texas Government Code, §551.021.

§10.7. Minutes of Commission Meeting.

(a) The chief clerk shall prepare written minutes of each commission open meeting, which shall state the subject of each deliberation and indicate each vote, order, decision, or other action taken. The general counsel is authorized to approve the minutes, which shall be kept in accordance with the agency's records retention schedule. [~~The chief clerk shall make audio recordings of commission meetings, which shall serve as the minutes. The chief clerk shall keep all recordings in the commission's permanent records.~~]

(b) The agency shall make an audio recording of each commission open meeting, which shall be retained for ten years after creation, unless a longer retention period is required by Texas Government Code, §441.187(b).

(c) [~~(b)~~] The agency [~~chief clerk~~] shall not make audio recordings of closed sessions of commission meetings properly held in accordance with the requirements of the Open Meetings Act. Except for a private consultation with an attorney under [~~the~~] Open Meetings Act, §551.071, the general counsel or chairman shall keep a certified agenda of each closed session. A certified agenda of a closed session is available for public inspection and copying only under the requirements of Open Meetings Act, §551.104(b)(3).

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 7, 2002.

TRD-200207289
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 239-5017

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CHAPTER 20. RULEMAKING

The Texas Commission on Environmental Quality (commission) proposes amendments to §20.9, Submission of Documents and §20.15, Petition for Adoption of Rules. The commission also proposes the repeal of §20.19, Working Committees and Groups.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments and repeal are as a result of the quadrennial review of this chapter (Rule Log Number 2002-014-020-AD) which was published in the August 23, 2002 issue of the *Texas Register* (27 TexReg 7997).

SECTION BY SECTION DISCUSSION

Proposed §20.9, Submission of Documents, is reworded to clarify the deadline for the submission of documents to the executive director. This is necessary for a clearer understanding of document submission requirements.

Proposed §20.15, Petition for Adoption of Rules, includes an update of the agency's name. During the 77th Legislature, 2001, the agency underwent the sunset review process culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013, and changed its name to the Texas Commission on Environmental Quality. HB 2912, §18.01(a), states that: "Effective January 1, 2004: (1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights and obligations of the Texas Commission on Environmental Quality...."

Proposed §20.19, Working Committees and Groups, would be repealed. This is necessary to remove rule language that is already more appropriately addressed in 30 TAC Chapter 5, Advisory Groups.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant additional fiscal implications for the agency or any other unit of state and local government due to administration and enforcement of the proposed rules.

The proposed rules are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, the proposed rules are intended to

revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20 because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any unit of state or local government due to implementation of the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be a clearer understanding of document submission requirements.

The proposed rules are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, the proposed rules are intended to revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20, because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementing the proposed rules, which are intended to update Chapter 20 by changing the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." Additionally, these proposed rules are intended to revise and clarify the section relating to the submission of documents to the executive director. The document submission language proposed for revisions under this rulemaking is intended to clarify when written documents may be submitted to the executive director. Last, the commission intends to repeal the working groups language that is currently addressed in Chapter 20, because it is already more appropriately addressed in Chapter 5. No significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed these proposed rules and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

Staff reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The principal intent of these proposed rules is to amend Chapter 20 due to the name change of the agency from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and to revise administrative practices of the agency. The proposed amendment to §20.9 clarifies the deadline for the submission of comments and §20.19 is repealed because this language addresses an issue that is better addressed in another chapter. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules affect the commission's administrative procedures. Therefore, these proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule. The commission invites public comment regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Staff conducted a takings impact assessment for these proposed rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this proposal is to amend Chapter 20 due to the name change of the agency from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and to revise and repeal sections relating to the commission's administrative procedures. The proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules only revise or repeal some of the commission's administrative procedures, and do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the proposed rules are not subject to the CMP. The commission invites public comment regarding the consistency of the proposed rules with the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 17, 2002 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal

30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-060-020-AD. Comments must be received by 5:00 p.m., December 23, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

30 TAC §20.9, §20.15

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

The amendments implement TWC, §5.103 and §5.105.

§20.9. Submission of Documents.

Written documents may be submitted to the executive director no later than the time of the hearing or by 5:00 p.m. on the last day of the comment period, whichever is later [~~, provided that the commission may grant additional time for submission of additional documents~~].

§20.15. Petition for Adoption of Rules.

(a) Any person may petition the commission to request the adoption of a rule. Petitions shall be submitted in writing to: Executive Director, Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

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

(b)-(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 November 7, 2002.

TRD-200207290
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 239-4712

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30 TAC §20.19

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

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

The repeal implements TWC, §5.103 and §5.105.

§20.19. Working Committees and Groups.

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 7, 2002.

TRD-200207291
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 239-4712

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS
SUBCHAPTER H. COMPUTERIZED CRIMINAL HISTORY SYSTEM

37 TAC §§27.101 - 27.106

The Texas Department of Public Safety proposes new §§27.101 - 27.106, relating to Computerized Criminal History System. The new sections are necessary to implement provisions of the Texas Code of Criminal Procedure, Chapter 60, directing the Texas Department of Criminal Justice and the Texas Department of Public Safety to adopt procedures to ensure that offender processing data is reported from the time an offender is arrested until the time the offender is released and to provide measures and policies designed to identify and eliminate redundant reporting of information.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rule will be to ensure the accuracy and completeness of information in the computerized criminal history system and to ensure the promptness of information reporting. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Louis Beaty, Manager, Crime Records Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5836.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Code of Criminal Procedure, Article 60.08.

Texas Government Code, §411.004(3) and Texas Code of Criminal Procedure, Article 60.08 are affected by this proposal.

§27.101. Computerized Criminal History System.

(a) The Department of Public Safety (department) is responsible for recording data and maintaining a database for a computerized criminal history record information system that in connection with the Corrections Tracking System managed by the Texas Department of Criminal Justice comprises the Criminal Justice Information System.

(b) The Computerized Criminal History System managed by the department serves:

(1) as the record creation point for the criminal justice information system maintained by the state; and

(2) as the control terminal agency for entry and indexing of criminal history information records, in accordance with federal law, rule and policy into the federal records systems maintained by the Federal Bureau of Investigation.

(c) Local law enforcement and criminal justice agencies must report, and the department must retain, the information required by Texas Code of Criminal Procedure, Chapter 60.

(d) The maintenance and dissemination of information in the Computerized Criminal History System, other than Computerized History Record Information, shall be in accordance with applicable state law.

§27.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Computerized criminal history system - refers to the data base containing arrest, disposition, and other criminal history maintained by the Department of Public Safety. In addition, as required by Code of Criminal Procedure, Article 60.051(f), the information maintained by the department under Code of Criminal Procedure, Article 62.08 is maintained within the Computerized Criminal History System.

§27.103. Specific Information Collected in the Computerized Criminal History System.

(a) The department shall assign codes for the reporting of data to the computerized criminal history system. The department shall designate and distribute a list of uniform offense codes to be used in reporting data to the criminal justice information system.

(b) The department has the sole responsibility for designating the state identification number for each individual whose name appears in the criminal justice information system. The department shall, upon receipt of fingerprint submissions of offender data, assign a unique state identification number to each offender reported to the computerized criminal history system.

§27.104. Collection of Records of Offenders to Be Forwarded to the Computerized Criminal History System.

(a) Law enforcement officers and other justice personnel shall collect information described by these rules, as part of the computerized criminal history system.

(b) The computerized criminal history system shall contain the information required by these rules and by Chapter 60, Code of Criminal Procedure, as amended.

§27.105. Reporting of Data to the Computerized Criminal History System.

(a) Criminal offender processing data as described by these rules and Texas Code of Criminal Procedure, Article 60 shall be reported by each agency responsible for the data from the time an offender is initially taken into custody or arrested until the time an offender is released from the jurisdiction of the criminal justice system.

(b) The arresting agency that initiates the entry of an offender into the criminal justice process for a specific incident shall prepare a fingerprint card, or an electronic submission of the same data, in order to initiate the reporting process for each incident reportable to the criminal justice information system.

(c) The prosecutor exercising jurisdiction over an offender's case shall ensure that each disposition by the prosecutor and the date of that disposition is reported to the computerized criminal history system.

(d) The clerk of the court exercising jurisdiction over an offender's case shall promptly report to the department the disposition of the case, including information concerning custody of an offender by a criminal justice agency or probation, the date of disposition, and a description of any appellate proceeding.

(e) In each county, the reporting agencies may make alternative arrangements for reporting the required information, including combined reporting, or electronic reporting, if the alternative reporting is approved by the department. If such an agreement is made, the ultimate responsibility for reporting remains with the agency required by statute to report the information.

(f) Except as otherwise required by applicable state laws or regulations, information or data required to be reported, by these rules or by Chapter 60, Code of Criminal Procedure, to the computerized criminal history system shall be reported promptly to the department, as follows:

(1) except as provided in paragraph (2) of this subsection, the information shall be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information;

(2) an offender's arrest shall be reported to the department not later than the seventh day after the date of the arrest.

§27.106. Compatibility of Data.

Data supplied to the computerized criminal history system shall be compatible with the criminal justice information system and shall contain the incident number appropriate to the individual and incident being reported. The state identification number shall be reported when already assigned by the Department and known by the reporting agency.

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 5, 2002.

TRD-200207214
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Texas Department of Human Services (DHS) proposes to amend §30.14, concerning certification of terminal illness; §30.16, concerning election of hospice care; §30.18, concerning revoking the election of hospice care; §30.20, concerning change of the designated hospice; §30.54, concerning special coverage requirements; §30.60, concerning Medicaid hospice payments and limitations; §30.62, concerning Medicaid hospice claims processing requirements; and §30.100, concerning additional requirements, in its Medicaid Hospice Program chapter. The purpose of the amendments is to outline requirements for intermediate care facilities for persons with mental retardation or related conditions (ICF/MR-RC) that contract with DHS to provide hospice services. The proposed rule language conforms to current DHS usage and practice.

The Medicaid Program allows a person residing in an ICF/MR-RC to elect hospice. The State Medicaid Manual outlines the requirements providers must follow when they choose to contract for hospice services. DHS added ICF/MR-RC, as appropriate, to sections that address nursing facilities to make rule language comply with provider requirements.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed sections will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. There will be no fiscal implications for local governments.

The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $42,036 in fiscal year (FY) 2003; $95,856 in FY 2004; $101,789 in FY 2005; $108,089 in FY 2006; and $114,779 in FY 2007.

Mr. Hine also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be rules for providers to follow when providing hospice services in an ICF/MR-RC that are consistent with hospice rules for nursing facilities. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because providers have already been offering hospice services in the ICF/MR-RC program. There is no anticipated economic cost to persons who are required to comply with the proposed sections for the same reason. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-319, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §§30.14, 30.16, 30.18, 30.20

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

§30.14. Certification of Terminal Illness.

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

(d) Documentation.

(1) Upon receipt of the certification, hospice staff must:

(A) for oral certification:

(i) (No change.)

(ii) notify the nursing facility or the intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC) of oral certification, when applicable; and

(B) (No change.)

(2) (No change.)

(e) Client-specific assessment.

(1) (No change.)

(2) The assessment must be done no earlier than 30 workdays before the recertification date. [~~The hospice provider must retain copies of all physician's certification statements, a current Texas Index for Level of Effort (TILE) assessment, if applicable, and the client-specific comprehensive assessment in both the hospice's records for the recipient and the recipient's nursing facility clinical record, if applicable.~~]

(f) Record maintenance. The hospice provider must retain copies of all physician certification statements, a current Texas Index for Level of Effort (TILE) or current level of need (LON) assessment, if applicable, and the client-specific comprehensive assessment in the recipient's records at the hospice and the nursing facility clinical record or ICF/MR-RC client record, if applicable [~~maintain copies of all physician certification forms in the recipient's hospice records and, when applicable, the recipient's nursing facility clinical record~~].

§30.16. Election of Hospice Care.

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

(f) Record maintenance. The hospice provider must retain copies of all election forms in the hospice records for the recipient and the recipient's nursing facility clinical record, or the intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC), if applicable.

§30.18. Revoking the Election of Hospice Care.

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

(d) The provider must submit the Medicaid Hospice Recipient Election/Cancellation/Discharge Notice to Provider Claims Services.

§30.20. Change of the Designated Hospice.

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

(d) The provider must submit the Medicaid Hospice Recipient Election/Cancellation/Discharge Notice to Provider Claims 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-200207192
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER E. COVERED SERVICES

40 TAC §30.54

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

§30.54. Special Coverage Requirements.

(a) Continuous home care. Continuous care is to be provided only during periods of crisis to maintain the recipient at the recipient's place of residence. A period of crisis is a period in which a recipient requires continuous care that is primarily skilled nursing care to achieve palliation or management of acute medical symptoms.

(1)-(10) (No change.)

(11) DHS [~~The Texas Department of Human Services (DHS)~~] may extend continuous home care if it deems it medically necessary. Providers will be notified in writing of DHS's decision within the time frames outlined in paragraph (9) of this subsection after DHS's receipt of the written request and documentation at the address outlined in paragraph (8)(A) of this subsection. DHS will fax the response to the provider if the provider includes a fax number with the extension request.

(12)-(13) (No change.)

(b) (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.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.60, §30.62

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

§30.60. Medicaid Hospice Payments and Limitations.

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

(c) Medicaid hospice-nursing facility per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is 95% of the Medicaid nursing facility rate for each hospice recipient in a nursing facility to take into account the room and board furnished by the facility. When the hospice-nursing facility rate is paid to the hospice provider, Medicaid vendor payment to the nursing facility is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(d) Medicaid hospice-intermediate care facilities for persons with mental retardation or related conditions (ICF/MR-RC) per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-ICF/MR-RC rate that is 95% of the ICF/MR-RC rate for each hospice recipient in an ICF/MR-RC to take into account the room and board furnished by the facility. When the hospice-ICF/MR-RC rate is paid to the hospice provider, Medicaid vendor payment to the ICF/MR-RC is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(e) [~~(d)~~] Medicaid time limitations for DHS hospice payment.

(1) To receive payment of the hospice nursing facility rate, the hospice and nursing facility providers must complete and submit the Texas Index for Level of Effort (TILE) assessment on the hospice recipient or applicant in a nursing facility within 20 days of either or both hospice election or entrance to the nursing facility.

(2) TILE Assessments received after the 20th day will have the stamp-in date as the effective date.

(f) [~~(e)~~] Medicaid payments on Medicare coinsurance for drugs and biologicals. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the Medicaid hospice provider a 5.0% coinsurance on prescription drugs and biologicals, not to exceed $5 per prescription.

(g) [~~(f)~~] Medicaid payments for Medicare respite coinsurance. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the hospice provider a 5.0% coinsurance for each day of respite care for up to five consecutive days of a hospice coinsurance period.

(h) [~~(g)~~] Third-party [~~Third party~~] resources. Medicaid pays only after all third-party resources have been used.

(i) [~~(h)~~] Medicaid payment limitations for inpatient care. During the 12-month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed 20% of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made;

(B) multiplying excess inpatient care days by the routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount in subparagraph (C) of this paragraph with interim payments made to the hospice inpatient care during the "cap period."

(4) If the inpatient care maximum has been exceeded, DHS recoups excess payments from subsequent Medicaid hospice provider claims.

§30.62. Medicaid Hospice Claims Processing Requirements.

(a) (No change.)

(b) Submittal and forms completion requirements. To receive Medicaid Hospice payments, the provider must submit the following documents to Provider Claims Payment:

(1) (No change.)

(2) Texas Medicaid Hospice Program Physician Certification of Terminal Illness form; [~~and~~]

(3) Texas Index for Level of Effort (TILE) Assessment form, if applicable; and[~~,~~]

(4) level of need (LON) form, if available.

(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 November 4, 2002.

TRD-200207190
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER J. MISCELLANEOUS

40 TAC §30.100

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

§30.100. Additional Requirements.

(a) Hospice providers must chart procedures in the nursing facility clinical record or the intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC) client record, and advise the nursing facility or ICF/MR-RC staff of changes in the recipient's condition as necessary.

(b) The hospice provider must have joint procedures with the nursing facility or ICF/MR- RC for ordering medications that ensure the proper payer [~~payor~~] is billed and for reconciling billing between the nursing facility or ICF/MR-RC and hospice provider.

(c) The recipient has the right to refuse any service provided by a nursing facility, ICF/MR- RC, or a hospice provider.

(d) (No change.)

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 438-3734

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CHAPTER 71. PUBLIC INFORMATION

The Texas Department of Human Services (DHS) proposes to repeal Subchapter A, concerning disclosure of information, §§71.1-71.4; Subchapter B, concerning confidentiality of information, §§71.11-71.17; Subchapter C, concerning adoption registry, §§71.21- 71.28; Subchapter D, concerning records management, §71.31; and Subchapter E, concerning public interest information, §71.40, in its Public Information Chapter. DHS proposes new Subchapter A, concerning disclosure

of information, §§71.101-71.103; Subchapter B, concerning client information, §§71.201-71.206; Subchapter C, concerning privacy of health information, §§71.301-71.310; and Subchapter D, concerning correcting information, §§71.401-71.405, in its newly titled Information Practices chapter. The purpose of the repeals and new sections is to adopt rules regarding the privacy of health information pursuant to the Health and Safety Code, Chapter 181, and the Standards for Privacy of Individually Identifiable Health Information adopted by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (45 Code of Federal Regulations §§164.500-164.534). The repeals and new sections also eliminate unnecessary rules and make the necessary rules consistent with current law and with current DHS duties and practices.

New Subchapter A covers the disclosure of information held by DHS, detailing how the public can request copies of or access to information and related charges for the information. New Subchapter B covers the handling of client information, except to the extent that the handling of client information is covered in program-specific rules. Subchapter C covers the handling of medical or health information and the rights individuals have regarding their own health information. Subchapter D covers the right of an individual to correct personal information held by DHS and the procedures for exercising this right. Rules in proposed Subchapter D are being moved from Chapter 79, Subchapter K, in order to locate rules concerning the handling of information as much as possible within the same chapter.

James R. Hine, Commissioner, has determined that, for the first five-year period the proposed sections will be in effect, there will be fiscal implications for state government as a result of implementing the Standards for Privacy of Individually Identifiable Health Information. The impact on state government is an estimated additional cost of $1,139,896 in fiscal year (FY) 2003; $0 in FY 2004; $0 in FY 2005; $0 in FY 2006; and $0 in FY 2007. There will be no fiscal implications for local governments.

Mr. Hine also has determined that, for each year of the first five years the repeals and new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the elimination of unnecessary rules and the implementation of necessary rules that are consistent with current law and with current DHS duties and practices. The primary public benefit of the rules regarding the privacy of health information in Subchapter C is that people will be informed of their rights regarding health information under both state and federal law and of how to exercise those rights. There will be no adverse economic effect on small or micro businesses or other businesses as a result of enforcing or administering the repeals and new sections, because these rules deal with the rights of individuals and the procedures for exercising those rights. The obligations imposed by these rules are placed on the government, not on private entities such as businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and new sections. There is no anticipated effect on local employment in geographic areas affected by these repeals and new sections.

Questions about the content of this proposal may be directed to Margaret Roll at (512) 438- 3812 in DHS Legal Services. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-311, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER A. DISCLOSURE OF INFORMATION

40 TAC §§71.1 - 71.4

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs; and under the Government Code, Chapter 552, which provides DHS with the authority to promulgate rules under which public records may be provided to the public.

The repeals implement the Human Resources Code, §§22.001-22.038, and the Government Code, §552.230.

§71.1. Compliance with Texas Open Records Act.
§71.2. Accepting Requests for Information.
§71.3. Schedule of Fees.
§71.4. General Principles.

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 5, 2002.

TRD-200207202
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: December 22, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER B. CONFIDENTIALITY OF INFORMATION

40 TAC §§71.11 - 71.17

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 12, 21, and 22, which prohibits the disclosure of personal information from DHS records, provides DHS with the authority to promulgate rules under which its records may be disclosed, and authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §12.003, §21.012, and §§22.001-22.038.

§71.11. Confidential Nature of the Case Record.
§71.12. Restrictions on Disclosure of Information.
§71.13. Inquiries from Internal Revenue Service.

§71.14. Inquiries from Other Agencies.
§71.15. Confidential Nature of Medical Information.
§71.16. Requesting Medical Information from Other Agencies.
§71.17. Furnishing Medical Information to Other Agencies.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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SUBCHAPTER C. ADOPTION REGISTRY

40 TAC §§71.21 - 71.28

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.038.

§71.21. Other Registries.
§71.22. Court Requirements.
§71.23. Inquiry through the Central Index.
§71.24. Registration in the Central Adoption Registry.
§71.25. Notification of a Match and Requirements for Release.
§71.26. Release.
§71.27. Release of Information without Registrant's Signed Consent.
§71.28. Release of Information about a Deceased Birth Parent.

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

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SUBCHAPTER D. RECORDS MANAGEMENT

40 TAC §71.31

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.038.

§71.31. Retention of Records.

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

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SUBCHAPTER E. PUBLIC INTEREST INFORMATION

40 TAC §71.40

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.038.

§71.40. Public Interest; Complaints.

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

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Texas Department of Human Services
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CHAPTER 71. INFORMATION PRACTICES

SUBCHAPTER A. DISCLOSURE OF INFORMATION

40 TAC §§71.101 - 71.103

The new sections are proposed under the Government Code, Chapter 552, which provides DHS with the authority to promulgate rules under which public records may be provided to the public.

The new sections implement the Government Code, §552.230.

§71.101. Definitions.

The following definitions apply to this subchapter, unless the context clearly indicates otherwise:

(1) DHS--Texas Department of Human Services.

(2) You and your--An individual who makes a request for information.

§71.102. Requests for Information.

(a) Texas Government Code, Chapter 552 (the Public Information Act) requires DHS to answer all written requests for information. If you make your request for information orally, the DHS staff to whom you make the request may choose whether to answer.

(b) Your request for information must identify who is making the request and the information requested. DHS will not ask you why you want the information or what you are going to do with it. DHS may, however, ask for a driver's license or other official identification to establish who you are. DHS may also ask questions to figure out the information you really want.

(c) If you ask to review information in person rather than get copies of it, you may have to go to the office that has the information. DHS will not move the original copies of public records from one office to another for your review.

§71.103. Schedule of Fees.

(a) DHS charges fees to cover the cost of copies of or access to public information. Except as otherwise provided in this part, DHS uses rules adopted by the Texas Building and Procurement Commission (TBPC) in 1 TAC §§111.61-111.71, to set charges for copies of or access to public information.

(b) As allowed by law, DHS has gotten an exemption from the fees set by TBPC for programming personnel time. Under this exemption, DHS charges $60 per hour for programming personnel time.

(c) DHS waives the charges for copies of or access to public information if the fee is $5 or less.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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SUBCHAPTER B. CLIENT INFORMATION

40 TAC §§71.201 - 71.206

The new sections are proposed under the Human Resources Code, Title 2, Chapters 12, 21, and 22, which prohibits the disclosure of personal information from DHS records, provides DHS with the authority to promulgate rules under which its records may be disclosed, and authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §12.003, §21.012, and 22.001-22.038.

§71.201. Definitions.

The following definitions apply to this subchapter, unless the context clearly indicates otherwise:

(1) Client--An individual who is an applicant for or recipient of services from the Texas Department of Human Services.

(2) DHS--Texas Department of Human Services.

(3) Individually identifiable health information--Information that is a subset of health information, including demographic information collected from an individual, and

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) that identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

§71.202. Confidential Nature of Client Information.

(a) State and federal law control the disclosure of information about a client and usually make the information confidential.

(b) General information that is not about a specific client is usually not confidential under state or federal law. This type of information includes financial or statistical reports and policies and procedures regarding public assistance.

(c) Except as otherwise provided by law, DHS treats information about an individual who has died the same way it treats information about an individual who is still alive.

§71.203. Client Access to Own Information.

A client has a right to review and get copies of the information in his or her own case file unless another law says otherwise.

§71.204. Release for Death Notification.

DHS may disclose identifying information, such as names and addresses, about the friends and relatives of a client to a funeral home, to law enforcement, or to another entity for purposes of notifying the friends or relatives of the client's death.

§71.205. Release for Eligibility Verification, Billing, and Service Delivery.

(a) Medicaid providers. A Medicaid provider or its authorized representative may get client information for eligibility verification and billing purposes. An authorized representative must have an agency agreement on file with DHS to get information on behalf of a Medicaid provider.

(1) For electronically stored information, a Medicaid provider or its authorized representative must contact its Medicaid claims administrator representative.

(2) For other forms of information, a Medicaid provider or its authorized representative must contact DHS and supply its Medicaid provider number.

(b) Non-Medicaid providers. A provider of services, other than Medicaid services, to DHS clients may get client information for eligibility verification and service delivery purposes. To get client information, a provider must contact its DHS contract manager.

(c) Other government agencies. Local, state, and federal government agencies may get client information for purposes of administering welfare or assistance programs as provided by state and federal law. To get client information, a local, state, or federal government agency must contact its DHS liaison.

§71.206. Release under Client Authorization.

(a) DHS will disclose information about a client from a client case file if it receives a valid authorization to release the information signed by the client or the client's personal representative.

(b) To be valid, an authorization to release client information other than individually identifiable health information must contain the following elements:

(1) a description of the information to be disclosed;

(2) the identity of the person who is being authorized to disclose information;

(3) the identity of the person to whom the information is to be disclosed;

(4) a description of the purpose of the disclosure;

(5) an expiration event that is related to the client or the purpose of the disclosure or an expiration date;

(6) the date the client or the client's personal representative signed the authorization;

(7) if the client's personal representative signed the authorization, a description of the personal representative's authority to act;

(8) a statement describing the client's right to revoke the authorization; and

(9) a statement about whether the client's refusal to sign the authorization will affect the client's eligibility for or delivery of services.

(c) In addition to the elements described in subsection (b) of this section, a valid authorization to release individually identifiable health information must tell the client that information released under an authorization may no longer be private and may be released further by the person receiving the information.

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

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SUBCHAPTER C. PRIVACY OF HEALTH INFORMATION

40 TAC §§71.301 - 71.310

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds; and under the Health and Safety Code, Chapter 181, which governs DHS's disclosure of protected health information.

The new sections implement the Human Resources Code, §§22.001-22.038 and §§32.001-32.052; the Government Code, §531.021; and the Health and Safety Code, §§181.001-181.204.

§71.301. Definitions.

(a) The following definitions apply to this subchapter, unless the context clearly indicates otherwise:

(1) CFR - Code of Federal Regulations

(2) Covered entity--

(A) a health plan;

(B) a health care clearinghouse; or

(C) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

(3) Designated record set--A group of records maintained by or for a covered entity that is:

(A) the medical records and billing records about individuals maintained by or for a covered health care provider;

(B) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(C) used, in whole or in part, by or for the covered entity to make decisions about individuals.

(4) DHS - Texas Department of Human Services.

(5) Health care provider--A provider of services (as defined in §1861(u) of the Social Security Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in §1861(s) of the Social Security Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(6) Individually identifiable health information--Information that is a subset of health information, including demographic information collected from an individual, and

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) that identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(7) Record--Any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

(8) Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(9) You--The subject of the individually identifiable health information.

(b) The federal Standards for Privacy of Individually Identifiable Health Information, 45 CFR §160.103 and §164.501, may define other terms used in this subchapter.

§71.302. Right of Access to Your Individually Identifiable Health Information.

(a) Except as stated in subsection (b) of this section, you have a right to look at or get a copy of the information that DHS keeps in a designated record set about you.

(b) DHS may refuse to let you look at or get a copy of the information, either with or without giving you a chance for a review of DHS's decision.

(1) You have a right to have DHS's decision reviewed when:

(A) a licensed health care professional decides that giving you the information would be likely to put you or another person in danger;

(B) the information refers to another person other than a health care provider and a licensed health care professional decides that giving you the information would be likely to cause substantial harm to the other person; or

(C) your personal representative asks for the information and a licensed health care professional decides that giving your personal representative the information would be likely to cause you or another person substantial harm.

(2) You do not have a right to have DHS's decision reviewed when:

(A) the information is psychotherapy notes;

(B) the information was collected in anticipation of or for use in a civil, criminal, or administrative proceeding; or

(C) DHS got the information from someone other than a health care provider with a promise of confidentiality and believes that giving you the information would be likely to disclose the source of the information.

(c) To ask for information under subsection (a) of this section, contact:

(1) the DHS office that grants your license, certificate, or permit, if you receive a license, certificate, or permit from DHS;

(2) your local office, if you are served by one or more DHS programs; or

(3) the DHS Privacy Officer in writing at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030, if neither paragraphs (1) nor (2) of this subsection apply.

(d) To ask for a review under subsection (b)(1) of this section, send your request in writing to the DHS Privacy Officer at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030.

§71.303. Designated Record Sets.

DHS has the following designated record sets that you may access:

(1) case records;

(2) hearing files;

(3) files regarding investigations of individual clients kept by the Office of Inspector General and Civil Rights Division;

(4) files regarding overpayments to clients;

(5) licensing files for nursing facility administrators;

(6) certification files for nurse aides; and

(7) permit files for medication aides.

§71.304. Right to Report of Disclosures.

(a) Except as stated in subsection (b) of this section, you have a right to know about DHS's disclosures of your individually identifiable health information. This right means that DHS has to tell you when it has disclosed your individually identifiable health information in the six years before you ask about the disclosures.

(b) DHS does not have to tell you about disclosures of your individually identifiable health information:

(1) to carry out treatment, payment, or health care operations;

(2) to you;

(3) under a valid authorization signed by you;

(4) to persons involved in your care or for identification purposes as stated in 45 CFR §164.508(b);

(5) for national security or intelligence purposes as stated in 45 CFR §164.512(k);

(6) to correctional institutions or law enforcement officers as stated in 45 CFR §164.512(k)(5);

(7) for purposes of research, public health, or health care operations if any information that directly identifies you, your relatives, your employers, or other members of your household is removed as stated in 45 CFR §164.514(e);

(8) that happened before April 14, 2003; or

(9) that are otherwise excluded from the reporting requirement in section 45 CFR §164.528(a).

(c) To ask for a report under subsection (a) of this section, write the DHS Privacy Officer at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030.

§71.305. Fees for Copies of Information.

(a) Except as stated in subsection (b) of this section, the fee DHS charges for providing a copy of individually identifiable health information is determined under §71.103 of this title (relating to Schedule of Fees).

(b) DHS will not charge for overhead when providing you a copy of your individually identifiable health information.

§71.306. Requests for Further Limits on Uses and Disclosures of Individually Identifiable Health Information.

Under the law, you may ask DHS to limit the uses and disclosures of your individually identifiable health information more than the law requires. The law also says that DHS is not required to agree to any limit you ask for. Thus, you may ask DHS to limit the disclosure of information about you by writing to the DHS Privacy Officer at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030. However, DHS will not be able to agree to your request. The volume and nature of the information DHS handles makes it impractical for DHS to agree to limit its use and disclosure of individually identifiable health information more than the law requires.

§71.307. Requests for Communication by Different Means or at Different Locations.

(a) You may ask DHS to contact you by different means or at different locations. This request must:

(1) be in writing;

(2) specify the different means or different location or both, as appropriate; and

(3) contain a statement that contacting you by the usual means or at the usual location could endanger you.

(b) To ask DHS to contact you by different means or at different locations, contact:

(1) the DHS office that grants your license, certificate, or permit, if you receive a license, certificate, or permit from DHS;

(2) your local office, if you are served by one or more DHS programs; or

(3) the DHS Privacy Officer in writing at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030, if neither paragraphs (1) nor (2) of this subsection apply.

§71.308. Verification of Identity and Authority.

(a) Before disclosing individually identifiable health information, DHS will verify the identity of the individual asking for the information and the power of the individual to get the information.

(b) DHS may require an individual to prove his or her identity. Proof of identity may include:

(1) driver's license;

(2) government-issued identification card with a photograph;

(3) social security number;

(4) date of birth;

(5) case number;

(6) birth certificate;

(7) hospital or birth records;

(8) adoption papers or records;

(9) work or school identification;

(10) official credentials;

(11) voter registration card;

(12) U.S. passport;

(13) wage or pay receipts;

(14) written statement on official stationery; or

(15) letter from an identifiable and official source.

(c) DHS may require the individual to prove his or her power to get information. Proof of this power may include:

(1) court order;

(2) subpoena;

(3) warrant;

(4) documentation of institutional review board or privacy board approval;

(5) written request on official stationery with a description of the legal permission for the disclosure;

(6) power of attorney;

(7) authorization signed by the subject of the information;

(8) documents delegating the authority to make decisions about health care; or

(9) guardianship papers.

§71.309. Disclosure of Health Information.

(a) Unless the law requires otherwise, DHS will disclose only the individually identifiable health information needed to accomplish the purpose for which the information is sought.

(b) DHS will not disclose individually identifiable health information when the purpose of the disclosure can be accomplished with de-identified health information, unless the law says otherwise.

(c) DHS will not disclose an entire medical record unless the entire medical record is justified as the amount of information needed for the purpose of the disclosure or the law says otherwise.

(d) When a disclosure is not routine and recurring, DHS will use the following criteria to decide how much individually identifiable health information to disclose:

(1) the purpose of the disclosure;

(2) how much the disclosure threatens privacy, including:

(A) the amount of individually identifiable health information to be disclosed;

(B) the amount of identifying information to be disclosed;

(C) how much the disclosure would increase the number of individuals or entities that have the individually identifiable health information; and

(D) the chance that more uses or disclosures of the individually identifiable health information could happen;

(3) DHS's ability to limit the disclosure, including:

(A) whether the information is in electronic or paper form; and

(B) the ease with which certain fields or data elements can be removed from the information released;

(4) the cost of limiting the disclosure; and

(5) the importance of the disclosure.

§71.310. Complaints.

Complaints about DHS's privacy policies or how DHS complies with its privacy policies may be made by telephoning 1-888-834-7406 (TDD 1-888-425-6889) or by writing the DHS Privacy Officer at Texas Department of Human Services Y-994, P.O. Box 149030, Austin, Texas 78714-9030.

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

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SUBCHAPTER D. CORRECTING INFORMATION

40 TAC §§71.401 - 71.405

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under the Government Code, §559.004, which requires DHS to adopt procedures for correcting incorrect information.

The new sections implement the Human Resources Code, §§22.001-22.038, and the Government Code, §559.004.

§71.401. Right to Correct Incorrect Information.

(a) An individual may ask the Texas Department of Human Services (DHS) to correct information that DHS has about that individual.

(b) DHS will review the request and decide if the information should be corrected under this subchapter.

(c) This subchapter does not apply when there are any other requirements that an individual give DHS updated and corrected information or when DHS has another applicable change process. For example, Texas Works advisors tell recipients of Medicaid, food stamps, and Temporary Assistance for Needy Families (TANF) about requirements to report new or changed information.

§71.402. Requesting a Correction.

(a) A request to correct information must be in writing and must:

(1) identify the individual asking for the correction;

(2) identify the disputed information about the individual;

(3) state why the information is wrong;

(4) include any proof that shows the information is wrong;

(5) state what correction is requested; and

(6) include a return address, telephone number, or email address at which the Texas Department of Human Services (DHS) can contact the individual.

(b) If DHS cannot identify the individual, find the information in question, or decide what correction is requested, DHS may contact the individual to clarify the request. If DHS cannot clarify the request, the request will be denied.

§71.403. Where to Send a Request for Correction.

(a) Texas Department of Human Services (DHS) employees send requests for correction to their supervisors or Human Resource Services representatives.

(b) Licensees send requests for correction to the DHS office that grants the license.

(c) Individuals served by DHS's programs send requests for correction to their local office.

(d) Contractors send requests for correction to the DHS office that is responsible for the contract.

(e) Other individuals send requests for correction to the DHS office they usually contact.

(f) Individuals who do not know where to send requests for correction should send them to the Information and Referral Unit, Texas Department of Human Services W-231, P.O. Box 149030, Austin, Texas 78714-9030, or to the Public Information Director in a regional office.

§71.404. The Correction Review.

(a) After getting a request for correction, the Texas Department of Human Services (DHS) will decide whether the information should be corrected. DHS will tell the individual about the decision in writing no later than 60 days after getting the request for correction.

(b) DHS may not destroy or change a record to make a correction. DHS will add the correct information to the record with the incorrect information and make a note that the correct information replaces the incorrect information.

(c) DHS will not look at information under this subchapter if DHS already looked at the information to decide whether it is correct under a different review process. Examples of other review processes include personnel grievance hearings, client fair hearings, formal appeals, informal dispute resolutions, and informal reconsiderations.

(d) If DHS gets the disputed information from a person other than the individual, DHS will not correct the information unless the other person agrees the information is wrong or DHS can determine that the information is wrong without help.

§71.405. Correction of Individually Identifiable Health Information in a Designated Record Set.

(a) If the Texas Department of Human Services (DHS) agrees to correct individually identifiable health information in a designated record set, DHS will ask the individual for permission to share the correction with relevant persons and to identify relevant persons with whom the correction should be shared. If the individual agrees to let DHS share the correction, DHS will make reasonable efforts to give the correction to:

(1) persons identified by the individual as needing to know about the correction; and

(2) persons whom DHS knows have received the incorrect information and who may have relied or could foreseeably rely on the information to the disadvantage of the individual.

(b) If DHS does not agree to make the correction requested, the individual may give DHS a statement disagreeing with the decision not to make the correction. In response, DHS may write a rebuttal. If DHS writes a rebuttal, DHS will give the individual a copy. DHS will attach the individual's statement and DHS rebuttal to any future disclosures of the information the individual asked DHS to correct. If the individual does not submit a statement disagreeing with the decision not to make the correction, the individual may ask DHS to attach the request for correction and written decision to any future disclosures of the information the individual asked DHS to correct.

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

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General Counsel, Legal Services
Texas Department of Human Services
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CHAPTER 79. LEGAL SERVICES SUBCHAPTER K. CORRECTING INFORMATION

40 TAC §§79.1001 - 79.1004

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

The Texas Department of Human Services (DHS) proposes to repeal Subchapter K, concerning correcting information, §§79.1001-79.1004, in its Legal Services chapter. The purpose of the repeals is to remove rules regarding correcting information from the Legal Services chapter in order to place them in its Chapter 71 (Information Practices), so that, as much as possible, all rules regarding the handling of information will be found in one place.

James R. Hine, Commissioner, has determined that, for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Hine also has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to have rules regarding the handling of information in one place. There will be no adverse economic effect on small or micro businesses or other businesses as a result of enforcing or administering the repeals, because the rules deal with obligations imposed upon government, not on private entities such as businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Margaret Roll at (512) 438- 3812 in DHS Legal Services. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-311, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes DHS to administer public assistance programs, and under the Government Code, §559.004, which requires state agencies to establish procedures for correcting incorrect information.

The repeals implement the Human Resources Code, §§22.001-22.038, and the Government Code, §559.004.

§79.1001. Right to Correct Information.

§79.1002. Requesting a Correction.

§79.1003. Where to Send a Request for Correction.

§79.1004. The Correction Review.

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

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Texas Department of Human Services
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For further information, please call: (512) 438-3734

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PART 4. TEXAS COMMISSION FOR THE BLIND

CHAPTER 159. ADMINISTRATIVE RULES AND PROCEDURES SUBCHAPTER E. PURCHASE OF GOODS AND SERVICES BY THE COMMISSION

40 TAC §159.107

The Texas Commission for the Blind proposes an amendment to §159.107, concerning best value factors in the purchase of goods and services. The amended rule will serve as the Commission's rule on applying best value factors if a proposed purchase is to be awarded on the basis of consideration of factors other than price and meeting specifications. The amendment also clarifies that the Commission will comply with requirements in Government Code, §2155.144(e), which requires health and human services agencies to notify the state auditor and consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications when it acquires goods or services with a value that exceeds $100,000. The amendment is consistent with rules adopted by the Health and Human Services Commission in 1 TAC, Part 15, Chapter 391.

Alvin Miller, Chief Financial Officer, 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 administration of the rules other than costs incurred by the Commission in establishing and administering its purchasing activities in accordance with the rules. There is no anticipated economic cost to persons who are required to comply with the rule. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the amendment.

Mr. Miller has also determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of the proposed section will be a more uniform and consistent approach for procuring goods and services by health and human services agencies.

Comments on the proposal may be submitted to Policy and Rules Coordinator, Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756, or by e-mail to pio@tcb.state.tx.us, or by fax

(512) 377-0682. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendment is proposed under Human Resources Code §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The following statute is also affected by these rules: Government Code, Title 10, §2155.144.

§159.107. Best Value Factors.

(a) (No change.)

(b) Scope.

(1) This section applies to the Commission's purchase of goods or services if the proposed purchase [~~:~~]

[~~(A) exceeds $100,000 in value; and~~]

[~~(B)~~] is to be awarded on the basis of consideration of factors other than price and meeting specifications.

(2) This section does not apply to proposed purchases of goods or services that will not involve consideration of factors other than price and meeting specifications.

(3) The Commission shall notify the state auditor and shall consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications when it acquires goods or services with a value that exceeds $100,000.

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

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

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

TRD-200207246
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Proposed date of adoption: February 7, 2003
For further information, please call: (512) 377-0611

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CHAPTER 162. CRISS COLE REHABILITATION CENTER

SUBCHAPTER A. GENERAL RULES

40 TAC §162.2

The Texas Commission for the Blind proposes an amendment to §162.2, concerning referrals to Criss Cole Rehabilitation Center. The amended rule will serve as the Commission's rule on accepting referrals from other state rehabilitation agencies into the training programs at the center when space is available.

Alvin Miller, Chief Financial Officer, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal effect on state and local governments. The anticipated economic cost to state agencies outside Texas who are required to comply with the rule will vary according to requested services and agreed-to reimbursement costs. There will be no adverse economic effect on small or micro businesses as a result of administering the rule.

Mr. Miller has also determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of the proposed section will be a state/federal facility that is fully utilized for its stated purpose.

Comments on the proposal may be submitted to Policy and Rules Coordinator, Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756, or by e-mail to pio@tcb.state.tx.us, or by fax (512) 377-0682. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendment is proposed under Human Resources Code §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The amendment also affects §91.052, which authorizes the Commission to enter reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned.

§162.2. Referrals.

(a) A person residing in Texas must be referred to CCRC by one of the Commission's vocational rehabilitation counselors or independent living caseworkers. Individuals residing outside of Texas who are receiving rehabilitation services from an agency in another state shall be considered for admittance and training on a space-available basis, subject to an agreement between the Commission and the state agency on payment of cost of services provided to the individual.

(b) Priority for admission shall be given to consumers who are blind and receiving services from the Commission's Vocational Rehabilitation Program.

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

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Terrell I. Murphy
Executive Director
Texas Commission for the Blind
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For further information, please call: (512) 377-0611

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CHAPTER 167. BUSINESS ENTERPRISES OF TEXAS

40 TAC §167.9

The Texas Commission for the Blind proposes the amendment of §167.9, pertaining to set-aside fees in the operation of Business Enterprises of Texas. The amendment creates a system for reviewing the fiscal resources of the program to ensure that the Commission's collection of set-aside does not exceed the extent necessary for purposes allowed in the Randolph-Sheppard Act. The amendment also creates a system for involving

the Elected Committee of Managers in potential annual changes. The amended rule sets the monthly set-aside fee of each manager at a percentage of the current fee as determined by criteria now set forth in the rule. The initial percentage is set at 25%.

Alvin Miller, Chief Financial Officer, has determined that for each year of the first five-year period the section is in effect there will be reduction in state revenue derived from BET facility manager set-aside fees to the extent the collection of set-aside fees is adjusted to comply with federal law as a result of the repeal or enforcing or administering the amended rule. There will not be an effect on small businesses. The cost effect on individuals who are required to comply with the amended rule represents an initial 75% reduction in the manager's set-aside fee.

Michael Hooks, BET Director, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the amendment as proposed will be the adoption of clearer rules for operating BET facilities in Texas pursuant to the Randolph-Sheppard Act.

Comments on the proposal may be submitted to Policy and Rules Coordinator, Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756, or by e-mail to pio@tcb.state.tx.us, or by fax (512) 377-0682. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendment is proposed under Human Resources Code §94.012, which authorizes the Commission to promulgate rules for the administration of the program and §94.016, which authorizes the commission to administer the program in accordance with the provisions of the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

The proposal affects no other statutes.

§167.9. Set-Aside Fees.

(a) (No change.)

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Commission for the following purposes:

(1) maintenance and replacement of equipment for use in BET;

(2) purchase of new equipment for use in BET;

(3) management services;

(4) assuring a fair minimum return to managers; and

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation timeif it is so determined by a majority vote of blind vendors licensed by the Commission, after the Commission provides to each such vendor information on all matters relevant to such proposed purposes.

(c) (No change.)

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the amount that results from applying the schedule in paragraphs (1)-(5) of this subsection. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the Commission with the active participation of the ECM at least annually during the regular meeting of the governing board next following the end of the State of Texas fiscal year. The review shall be for the purpose of determining whether the percentage needs to be adjusted in order to meet the needs of the program. The governing board of the Commission and the ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days prior to any meeting of the Commission's governing board in which a change in the percentage is to be considered. For the period from the effective date of this amended rule until the Commission undertakes its first annual review of the set-aside fee, the percentage shall be 25 percent. [~~The amount of set-aside fee owed shall be according to the following schedule.~~]

(1) On net proceeds of $1 to $999.99, the amount shall be 2% of the manager's net proceeds.

(2) On net proceeds of $1,000 to $1,499.99, the amount shall be 3% of the manager's net proceeds.

(3) On net proceeds of $1,500 to $1,999.99, the amount shall be 4% of the manager's net proceeds.

(4) On net proceeds of $2,000 to $5,999.99, the amount shall be $80 plus 18% of the manager's net proceeds over $2,000.

(5) On net proceeds of $6,000 or more, the amount shall be $800 plus 24% of the manager's net proceeds over $6,000.

(e) (No change.)

(f) (No change.)

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

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

TRD-200207245
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Proposed date of adoption: February 7, 2003
For further information, please call: (512) 377-0611

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CHAPTER 171. MEMORANDA OF UNDERSTANDING

The Texas Commission for the Blind (TCB) proposes the repeal of §171.2 pertaining to Coordinated Services for Children and Youths and the amendment of §171.3 pertaining to Transition Planning for Students Receiving Special Education. The repeal of §171.2 is necessary because the reason for its adoption no longer exists. The lead agency in the memorandum of understanding (MOU) changed in the last legislative session and the revised statutory language no longer requires the MOU to be adopted by rule. A new MOU has been signed by applicable agencies and is now posted on the Health and Human Services Commission's public website.

The proposed amendment to §171.3 pertaining to Transition Planning for Students Receiving Special Education is necessary to correct the cross-reference to the Texas Education Agency's rules, which contains the text of a new MOU being proposed for adoption by reference. The new MOU addresses the respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving transition services. The rule as amended and the new MOU will more clearly establish the

respective responsibilities of each agency for the provision of services necessary to prepare students enrolled in special education programs for a successful transition to life outside of the public school system.

Texas Education Code (TEC), §29.011, requires that the TEA, the Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Texas Rehabilitation Commission (TRC), by a cooperative effort, develop and by rule adopt an MOU. TEC §29.011 specifies that the TEA shall coordinate the development of the MOU and that the TEA, the TDMHMR, and the TRC may request other appropriate agencies to participate in the development of the MOU. Accordingly, the proposed MOU includes the participation of the following agencies: Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Education Agency, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Workforce Commission, and Texas Youth Commission.

The proposed new MOU (codified as 19 TAC §89.1110) and referenced within the Texas Commission for the Blind's rule establishes definitions; better addresses information sharing and agency participation; and clarifies and adds provisions relating to regional and local collaboration, cross-agency training, and dispute resolution. Other terms of the proposed MOU provide for the MOU to be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

Alvin Miller, Chief Financial Officer, has determined that for each year of the first five years the repeal and amended rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Miller has also determined that for each year of the first five years the repeal and amended rule are in effect the public benefit anticipated as a result of enforcing the rule is two-fold. The repeal eliminates unnecessary rules. The proposed amendment creates a coordinated transition service delivery system that results in increased opportunities for students to achieve their post-secondary goals for adult life benefiting the individual, his or her family, and the community. Additionally, better-coordinated services are more cost effective for the state by reducing costly duplicative efforts by multiple agencies. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new section.

Comments on the proposal may be submitted to Policy and Rules Coordinator, Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756, or by e-mail to pio@tcb.state.tx.us, or by fax (512) 377-0682. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

40 TAC §171.2

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

The repeal is proposed under Human Resources Code, §§91.011 and 91.021, which authorize the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and to negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual disability and another disabling condition.

The proposal affects no other statutes.

§171.2. Coordinated Services for Children and Youths.

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 6, 2002.

TRD-200207244
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Proposed date of adoption: February 7, 2003
For further information, please call: (512) 377-0611

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40 TAC §171.3

The amendment is proposed under Human Resources Code, §§91.011 and 91.021, which authorize the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs and to negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual disability and another disabling condition.

The amendment also affects Texas Education Code, §29.011.

§171.3. Transition Planning for Students Receiving Special Education.

The Commission adopts by reference the memorandum of understanding contained in 19 TAC §89.1110 [~~§89.110~~]. The memorandum of understanding has been executed by the Texas Commission for the Blind; Texas Commission for the Deaf and Hard of Hearing; Texas Department of Health; Texas Department of Housing and Community Affairs; Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; Texas Department of Protective and Regulatory Services; Texas Education Agency; Texas Higher Education Coordinating Board; Texas Juvenile Probation Commission; Texas Rehabilitation Commission; Texas Workforce Commission; and Texas Youth Commission [~~Texas Education Agency, the Texas Commission for the Blind, the Texas Department of Human Services, the Texas Employment Commission, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission~~]. The purpose of the memorandum of understanding is to establish the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education programs for a successful transition to life outside the public school system.

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 6, 2002.

TRD-200207243

Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Proposed date of adoption: February 7, 2003
For further information, please call: (512) 377-0611

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ADOPTED RULES

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §26.5, relating to Definitions; §26.31, relating to Disclosures to Applicants and Customers, §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.219, relating to Administration of Expanded Local Calling Service (ELCS) Requests; §26.221, relating to Application to Establish or Increase Expanded Local Calling Service (ELCS) Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.401, relating to Texas Universal Service Fund (TUSF); §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); and §26.420, relating to Administration of Texas Universal Service Fund (TUSF) with no changes to the text published in the August 23, 2002 *Texas Register* (27 TexReg 7705). These amendments eliminate references to the Tel-Assistance program which was repealed in September 2001 pursuant to House Bill (HB) 2156, 77th Legislature (2001 Texas General Laws 5160), Relating to Eligibility Process for Certain Utility Customer Discounts, Public Utilities Regulatory Act (PURA) §55.015. In repealing the Tel-Assistance program (formerly, Public Utility Regulatory Act, Texas Utilities Code Annotated §§56.071-.079), the Legislature stated in HB 2156 §4 and §5, respectively, that on September 1, 2001, "all funds, employees, and resources of the Public Utility Commission of Texas and the Texas Department of Human Services dedicated to the tel-assistance service program become funds, employees, and resources dedicated to the lifeline service program under Section 55.015, Utilities Code", and that "all persons receiving benefits under the tel-assistance service program shall be automatically enrolled in the lifeline service program." Project Number 26135 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Texas Legal Services Center (TLSC) and reply comments from Verizon Southwest (Verizon), the Texas Statewide Telephone Cooperative (TSTCI) and Southwestern Bell Telephone, L.P. (SWBT).

On September 23, 2002, TLSC expressed it concerns regarding HB 2156's intent to re-direct Tel-Assistance resources for the purpose of promoting Lifeline and Link Up services. TLSC recommended the addition of language in §26.420 to allow the commission to utilize appropriate funding for outreach activities for Lifeline and Link-Up programs. On October 1, 2002, TLSC filed a correction to its comments and provided a revised recommendation on this matter, stating that §26.420 had been revised in June 2002 and that the original recommendation in the September 23rd comments had provided an inappropriate citation for the revision language. TLSC corrected its earlier recommendation and further extrapolated upon its initial request by recommending that the commission add the following language as new "§26.420(g)(C)"(sic):

(C) Other entities. The commission shall inform the TUSF Administrator of the funding level needed to adequately inform low income customers of rate reduction programs (Lifeline) and programs designed to increase low income access through waivers of initial customer fees (Link Up). Funding information and the designation of providers will be established annually by the commission and be provided to the TUSF Administrator during the first month of each calendar year. The commission shall also determine whether other entities qualify to receive funds from the TUSF. Other entities qualifying for the following programs are eligible to receive funds from the TUSF: (i) Telecommunications Relay Service; and/or (ii) Specialized Telecommunications assistance Program.

In its September 23, 2002 comments, TLSC also recommended implementation of additional rules to require local exchange carriers providing Lifeline and Link Up service to promote these services in a more prominent manner. TLSC suggested that color inserts in customer bills would be appropriate. Finally, TLSC recommended that carriers be required to track Lifeline and Link Up enrollment more frequently, on a quarterly basis, and provide these reports to the commission.

On October 2, 2002, Verizon filed a reply to TLSC's comments. Verizon opposed TLSC's recommendations. Verizon noted that §26.412(f), relating to Lifeline and Link Up services, already requires the commission to work with the Texas Department of Human Services (TDHS) and all eligible carriers to work together in developing material to inform customers of the availability of the services. Verizon asserted that all such carriers publish information about Lifeline and Link Up in their directories and provide an annual notice to their customers. Therefore, Verizon believed that TLSC's recommendation regarding further requirements for carrier promotion of the services is unnecessary.

Verizon also opposed TLSC's proposal for quarterly reporting and stated that §26.412(j) already requires annual reports to be made to the commission regarding Lifeline and Link Up enrollment and that the universal support fund administrator is provided with monthly reports. Verizon asserted that there is simply no need for additional reporting requirements.

On October 7, 2002, TSTCI filed its reply to TLSC's comments. TSTCI also opposed TLSC's recommendations. TSTCI noted that it represents thirty-five carriers and that its members have

a vested interest in increasing the number of customers on the telecommunications network. Therefore, TSTCI asserted that its members share TLSC's interest in providing telephone service to those not connected. However, TSTCI maintained that existing commission rules do adequately address the concerns expressed by TLSC in its comments. Specifically, §26.412(f)(1)(C) and §26.412(f)(2)(E) provide for a cooperative effort between and among telecommunications carriers, TDHS and the commission in the development of Lifeline and Link Up services materials. In addition, §26.412(j) provides for annual reports on automatic enrollment subscribership. Further, TSTCI noted that monthly reports specifying the number of Lifeline and Link Up subscribers are provided by all carriers to the Texas Universal Service Fund administrator. Finally, TSTCI argued that the purpose of this project is basically administrative and that the issues raised by TLSC are therefore inappropriate. TSTCI reminded parties that the Lifeline automatic enrollment program was developed by many interested parties through meetings and workshops. TSTCI advised that an administrative project does not provide the necessary forum for the amendments recommended by TLSC.

On October 7, 2002, SWBT also filed a reply to TLSC's comments. SWBT asserted that TLSC's proposed amendments are substantive despite TLSC's claims to the contrary. SWBT recommended that the commission reject TLSC's proposals because they are unsupported and go beyond the scope of the project. SWBT concluded that TLSC's issues should be raised in a different proceeding and recommended that the commission adopt the proposed language as published.

Project Number 24900, *P.U.C. Rulemaking to Implement HB 2156 as it Concerns Enrollment in Telephone Discount Programs*, relating to revisions to §26.412, Lifeline and Link Up Services, will address the details of automatic enrollment and administrative consolidation under the Low Income Database Administrator (LIDA). The creation of a central administrator for Lifeline and Link Up services will dramatically alter opportunities for public promotion of these services by concentrating public interest upon a single toll-free number and a uniform point of contact. Recognizing the impact of this event, the commission prudently waits to re-direct funding, as authorized by HB 2156, to promotions that will produce an opportunity to assist low-income subscribers in obtaining all available utility discounts with a single telephone call. While the commission appreciates TLSC's concern regarding the development of promotional materials and outreach for the Lifeline and Link Up programs, the commission declines to adopt the amendment proposed by TLSC for §26.420 because it is not persuaded that the addition is necessary. The commission has the necessary latitude to accomplish the intentions of the revised language by virtue of its existing Procedural and Substantive Rules and the authority of HB 2156 §4 and §5.

The commission agrees with Verizon's and TSTCI's assertions that the existing annual report related to Lifeline and Link Up enrollment is adequate for public review of the success or failure of the programs. The commission also concurs in Verizon's and TSTCI's view that parties are currently working cooperatively to improve the automatic enrollment process to accomplish the goals discussed by TLSC. In addition, as noted by TSTCI and SWBT, this project is designed to perform the simple task of removing references to the Tel-Assistance program from the noted commission substantive rules. Therefore, the commission declines to address in this project the issues raised by TLSC regarding additional rules related to promotion and reporting for Lifeline and Link Up services in this project. Again, the commission refers TLSC to Project Number 24900 which, though delayed for practical reasons, will refine the reporting requirement and provide a forum for further discussions regarding carrier responsibilities related to promotion of the Lifeline and Link Up service programs.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction; and specifically, §51.001(a), which states that it is the purpose of PURA Subtitle C, "Telecommunications Utilities", to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest. Moreover, these amendments are necessary to effectuate the directive of House Bill 2156, 77th Legislature, which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

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

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TRD-200207267
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 27, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 936-7306

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SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.31

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel- Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

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

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 23, 2002
For further information, please call: (512) 936-7306

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.217, 26.219, 26.221, 26.224

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

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

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TRD-200207280
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 23, 2002
For further information, please call: (512) 936-7306

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.401, 26.403, 26.420

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 2156, 77th Legislature (2001 Texas General Laws 5160), which requires that all persons receiving benefits under the Tel-Assistance service program shall be automatically enrolled in the Lifeline service program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015.

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

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TRD-200207281
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7306

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER E. RIGHT TO CORRECTION OF INCORRECT INFORMATION

19 TAC §§1.80 - 1.83

The Texas Higher Education Coordinating Board adopts new §§1.80- 1.83 concerning the right to correct incorrect information within Chapter 1, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7330). Specifically, the new rules provide for an individual's right to have incorrect information contained in Board records corrected, and the procedure by which he or she may exercise that right.

There were no comments received in response to the new rules.

The new rules are adopted under the Texas Government Code, Chapter 559, which requires state agencies to adopt a privacy policy and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules.

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 7, 2002.

TRD-200207294
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 27, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 427-6162

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CHAPTER 5. PROGRAM DEVELOPMENT
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.11

The Texas Higher Education Coordinating Board adopts amendments to §5.11 concerning uniform use of the Common Admission Application, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7331). Specifically, the amendments would clarify that no alteration may be made to the common application and clarify who shares in the cost of the electronic application, how each institution's portion is calculated, and billing information.

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §51.762, which states that the Coordinating Board, with the assistance of an advisory committee composed of representatives of general academic teaching institutions and in consultation with affected general academic teaching institutions, shall adopt by rule a common admission application form for use by a person seeking admission as a freshman student to a general academic teaching institution.

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 7, 2002.

TRD-200207295
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 27, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 427-6162

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS AND TECHNICAL COLLEGES

SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §9.93

The Texas Higher Education Coordinating Board adopts amendments to §9.93 concerning certification of review of applicable skill standards in the design of the proposed curriculum with changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7332). Specifically, these amendments provide that a public two-year college applying for approval of a new workforce education program must certify that "Skill standards recognized by the Texas Skill Standards Board, if they exist for this discipline, have been reviewed and considered for inclusion in the curriculum for the program."

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §§54.051(n), 54.545, 61.051(j), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3)-(4), 130.003(e)(4), and 130.006, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public community/junior, technical, and state colleges for various functions relating to program development, including but not limited to the approval of degree and certificate programs.

§9.93. Application, Approval, and Revision Procedures for Instructional Programs in Workforce Education.

(a) In accordance with the Guidelines for Instructional Programs in Workforce Education as approved by the Board, each institution wishing to offer a new certificate or applied associate degree program must have completed the following procedures:

(1) Completion of the Application for the Approval of a New Technical or Continuing Education Program. Completed application forms and a statement of assurances must be approved by the governing board and the chief executive officer of the institution, and forwarded to the Board's Community and Technical Colleges Division. The statement of assurances must certify that the following criteria have been met:

(A) The institution has documented local and/or regional workforce demand for the program.

(B) Basic and workforce skills have been integrated into the curriculum.

(C) The institution has an enrollment management plan for the program.

(D) The institution has or will initiate a process to establish articulation agreements for the program with secondary and/or senior level institutions.

(E) The program is designed to be consistent with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools, and with the standards of other applicable accrediting agencies, and is in compliance with appropriate licensing authority requirements.

(F) The program would not unnecessarily duplicate existing programs at other institutions.

(G) Representatives from private sector business and industry have been involved in the creation of the program through participation in an advisory committee.

(H) Adequate funding is available to cover all new costs to the institution over the first five years after the implementation of the program.

(I) The institution has an improvement plan in place for all workforce programs that do not currently meet Board standards for both graduation and placement.

(J) The appropriate Higher Education Regional Council has been notified in writing of the proposal for a new program.

(K) Skill standards recognized by the Texas Skill Standards Board, if they exist for this discipline, have been reviewed and considered for inclusion in the curriculum for the program.

(2) Completion of Staff Review Process. The Board staff shall review the application for satisfactory fulfillment of the new program requirements and procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education. The staff shall confer with the institution when additional information or clarification is needed.

(3) Completion of Formal Program Review.

(A) Once the program requirements have been met, the Board staff may schedule the program for formal program review. This review process shall include representatives from the institution, the Board staff, and other appropriate agencies and institutions of higher education.

(B) The Assistant Commissioner for Community and Technical Colleges Division shall recommend certificate and applied associate degree programs to the Commissioner for approval or disapproval or referral to the Board.

(4) New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, and for applied associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education.

(5) Each quarter, the Commissioner shall send a list of his approvals and disapprovals under this section to Board members. A list of the approvals and disapprovals shall also be attached to the minutes of the next appropriate quarterly meeting.

(6) The Commissioner must forward a program to the Board for consideration at an appropriate quarterly meeting if either of the following conditions is met:

(A) The proposed program is the subject of an unresolved grievance or dispute between institutions.

(B) The Commissioner has disapproved of the proposed program and the institution has requested a Board review.

(b) Each institution wishing to revise an existing certificate or applied associate degree program must complete the procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education.

(c) Administrative Officers. All programs must be under the direction of an administrator having appropriate authority to ensure that quality is maintained and that programs are conducted in compliance with all applicable laws and rules. Administrative officers must possess credentials, work experience, and/or demonstrated competence appropriate to their areas of responsibility as specified by the Southern Association of Colleges and Schools Commission on Colleges.

(d) Faculty and Staff. Faculty and staff must be approved by the postsecondary institution. Each individual must meet the minimum qualifications established by the Board.

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

Filed with the Office of the Secretary of State on November 7, 2002.

TRD-200207296
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 16, 2002
For further information, please call: (512) 427-6162

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.4

The Texas Higher Education Coordinating Board adopts amendments to §17.4 concerning authority of the Commissioner to re-approve projects, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7332). Specifically, the amendments provide the Commissioner authority to re-approve projects with a change in funding source between Board or Campus Planning Committee meetings.

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules and Texas Education Code, §61.0572 and §61.058, which authorize the Board to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

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

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TRD-200207297
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM FOR ALL LOANS WHICH ARE SUBJECT TO THE PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM, THE COLLEGE ACCESS LOAN PROGRAM, THE HEALTH EDUCATION ASSISTANCE LOAN PROGRAM, AND THE HEALTH EDUCATION LOAN PROGRAM

19 TAC §21.57

The Texas Higher Education Coordinating Board adopts amendments to §21.57 concerning increasing the annual and aggregate loan limits of the Hinson-Hazlewood College Access Loan, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7333). Specifically, these amendments will increase the annual College Access Loan limit from $7,500 to $10,000 and the aggregate limit from $30,000 to $45,000.

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §52.01, which provides the Coordinating Board with the authority to administer the student loan 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 7, 2002.

TRD-200207298
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 27, 2002
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For further information, please call: (512) 427-6162

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SUBCHAPTER S. BORDER COUNTY DOCTORAL FACULTY EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.590, 21.591, 21.596

The Texas Higher Education Coordinating Board adopts amendments to §§21.590, 21.591, and 21.596 concerning the authority, scope and purpose of the program; the definition of service period, and repayment of education loans for the Border County Doctoral Faculty Education Loan Repayment Program, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7334). Specifically, the amendments would change the service period required to qualify for loan repayment for a doctoral faculty member from teaching twelve-months to a period equal to a minimum of 9 months of a 12 month academic year. The amendments would also clarify the authority, scope and purpose of the rules.

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §61.701, which authorizes the Coordinating Board to provide assistance in the repayment of certain teacher and faculty education loans for persons who apply and qualify for the assistance.

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 7, 2002.

TRD-200207299
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 27, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 427-6162

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SUBCHAPTER V. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION CONDITIONAL GRANT PROGRAM

19 TAC §21.684

The Texas Higher Education Coordinating Board adopts amendments to §21.684 concerning the Teach for Texas Alternative Certification Conditional Grant Program, without changes to the proposed text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7335). Specifically, the amendments would limit eligibility to individuals who are employed as classroom teachers, or contracted as such, who are enrolled fulltime in an alternative certification program, and who meet all of the other requirements of the program.

There were no comments received in response to the amendments.

The amendments to the rule are adopted under the Texas Education Code, §56.357, which provides the Coordinating Board with the authority to award conditional grants to assist persons seeking educator certification through alternative educator certification programs.

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 7, 2002.

TRD-200207300
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 27, 2002
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For further information, please call: (512) 427-6162

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENT OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) adopts an amendment to §535.2 concerning Broker's Responsibility without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register* (27 TexReg 9255).

The amendment adds new subsection (d) to §535.2 to define the minimum level of service that a consumer may expect to receive from a broker who represents the consumer. The public benefit anticipated as a result of enforcing the section will be clarification that a real estate licensee is required to provide a minimum

level of service to a consumer in a real estate transaction. A real estate licensee must accept and propose offers and counter-offers, answer any questions regarding offers and counter-offers, and assist in developing, communicating and presenting offers and counter-offers for the broker's client.

No comments were received regarding the proposal.

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

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 6, 2002.

TRD-200207256
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: November 26, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 465-3900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER B. RECIPROCAL LICENSING AGREEMENTS

22 TAC §571.31

The Texas Board of Veterinary Medical Examiners adopts the amendments to §571.31, concerning Reciprocal Agreements with changes to the proposed text as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8396).

The non-substantive amendments are being adopted to state clearly that the Board will not accept license applications under any former reciprocal licensing agreements with any state. The adopted rule will make the rule easier for licensees and the public to follow and understand.

No comments were received concerning these amendments.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

§571.31. Reciprocal Licensing Agreements.

The Board shall not accept applications for licensure under any former reciprocal licensing agreements with any state.

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

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

TRD-200207181
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: November 24, 2002
Proposal publication date: September 6, 2002
For further information, please call: (512) 305-7563

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SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.59

The Texas Board of Veterinary Medical Examiners adopts the amendments to §571.59, concerning Expired Licenses without changes to the proposed text as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8396).

The amendments specify the factors that the Board will consider in determining whether to waive the state licensing examination for a former licensee who failed to timely renew his or her license. The amendments codify the Board's previous policy in this area.

The amendments clarify existing Board policy and make the rules easier for the licensee and public to follow and understand.

No comments were received concerning this amended section.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

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

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

TRD-200207182
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: November 24, 2002
Proposal publication date: September 6, 2002
For further information, please call: (512) 305-7563

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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners adopts the repeal of §571.60, concerning Expiration of License to Practice without change to the proposal as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8397). The information contained in this rule is being incorporated into another section dealing with expired licenses.

The repeal eliminates unnecessary redundancy and makes the rules easier for licensees and the public to follow and understand.

No comments were received concerning the repeal of this section.

The section is repealed under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

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

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

TRD-200207183
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: November 24, 2002
Proposal publication date: September 6, 2002
For further information, please call: (512) 305-7563

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22 TAC §571.61

The Texas Board of Veterinary Medical Examiners adopts the amendments to §571.61, concerning Inactive License Status with changes to the proposed text as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8396).

The amended section now requires that a licensee on inactive status who is requesting a return to active status must maintain an average of 17 hours of continuing education.

The amendments maintain consistency with continuing education requirements set out in other sections of the rules and encourage veterinarians to increase their practice skills.

No comments were received concerning this amended section.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

§571.61. Inactive License Status.

(a) Application. A licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the state of Texas, provided:

(1) his or her current license is active and is in good standing;

(2) a request in writing, on the form prescribed by the board, is made for his or her license to be placed on official inactive status; and

(3) the original request is made during the annual license renewal period between January 1 and February 28; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. The following restrictions shall apply to licensees whose licenses are on inactive status:

(1) Except as provided in §801.004, Texas Occupations Code, the licensee may not engage in the practice of veterinary medicine or otherwise provide treatment to any animal in the State of Texas.

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) and/or a Department of Public Safety (DPS) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Misuse of DEA Narcotics Registration and Controlled Substances Records Keeping for Drugs on Hand, respectively).

(c) Return to Active Status. A licensee on inactive status wishing to practice veterinary medicine within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to licensees applying to return to active status.

(1) A veterinarian licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a $25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements

(1) If a licensee on inactive status requesting a return to regular license status has maintained an annual average of 17 hours of continuing education, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than 17 hours, the licensee will be placed on regular license status but must complete 34 hours of continuing education in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof of 17 hours of continuing education shall not be required for an active license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the calendar year.

(e) Cancellation of Inactive License. A license maintained on inactive status will be automatically cancelled after ten years. A new license will be issued only upon completion of all requirements for licensure. During the ninth year of inactive status, the Board will notify the inactive licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for a license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

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-200207184
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. ADVERTISING, ENDORSEMENTS AND CERTIFICATES

22 TAC §573.31

The Texas Board of Veterinary Medical Examiners adopts the repeal of §573.31, concerning Ban on Testimonials and Endorsements without changes to the proposal as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8398).

This repeal is in response to a recent Attorney General's Opinion (JC-0458) challenging the constitutionality of rules banning testimonials.

The repeal of this section will eliminate any public uncertainty and confusion concerning the legality of the section in light of the Attorney General's Opinion.

No comments were received concerning this repeal.

This section is repealed under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

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

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TRD-200207185
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.45

The Texas Board of Veterinary Medical Examiners adopts new §573.45, concerning Extra-Label or Off-Label Use of Drugs with changes to the proposed text as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8398).

This section sets out factors that should guide a veterinarian when considering whether to dispense or administer a drug for a purpose not listed on the drug label. It further sets out the circumstances where a veterinarian should inform a client that off-label use could pose a risk to the patient.

Adoption of this section will answer some of the common questions by veterinarians concerning the appropriate off-label uses of veterinary drugs and better inform the public when such uses may pose a risk to an animal.

At the request of the Executive Director, the Board added a sentence at the end of the section that says if a veterinarian orally informs the client that the off-label use in question is not commonly accepted in the veterinary community and that such usage could pose a risk to the health of the animal, the oral notification shall be recorded in the patient records. The Texas Veterinary Medical Association questioned the use of the term "average veterinarians" in the section. The Board notes that the term is consistent with other sections that define the community standard of care for veterinarians. For that reason, the Board declined to change the noted language.

The section is adopted under the authority of the Texas Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

§573.45. Extra-Label or Off-Label Use of Drugs.

(a) Extra-label or off-label use is the actual or intended use of a drug in an animal that is not in accordance with the approved labeling, and includes, but is not limited to:

(1) use in species not listed in the labeling;

(2) use for diseases or other conditions not listed in the labeling;

(3) use at dosage levels, frequencies, or routes of administration other than those stated in the labeling; and

(4) deviation from the labeled withdrawal time based on these different uses.

(b) A veterinarian must use his or her discretion in the off-label use of drugs for animals. In exercising such discretion, a veterinarian shall consider, to the extent possible:

(1) whether the off-label use of a drug meets the community standard of humane care and treatment set out in §573.22 of this title;

(2) the established safety of the off-label usage;

(3) the inclusion of a drug in a standard veterinary formulary;

(4) analyses of off-label usage in the veterinary medical literature and in articles and commentaries written by the veterinarian's peers in the veterinary medical profession;

(5) information provided by the drug's manufacturer, vendor or the FDA as to whether off-label usage of a drug may present a risk to public health; and

(6) any other sources of pertinent information.

(c) If anticipated off-label use of a drug is not commonly accepted or used by average veterinarians in the community in which the veterinarian practices or if the off-label usage does not have an established safety record, the veterinarian shall orally or in writing inform the client that the off-label usage is not commonly accepted or used in the veterinary community and that such usage could pose a risk to the health of the animal. Any oral notification shall be recorded in the patient records.

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

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TRD-200207187

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF AND MISCELLANEOUS

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts the amendments to §577.15, concerning Fee Schedule without changes to the proposed text as published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8399).

The amended rule increases the Board's annual fees for renewals of all categories of license renewals by $4.00 to cover the costs of the Board's legislative appropriations for FY 2003. The rule also levies an additional $5.00 subscription fee for several categories of license renewal. This fee is mandated by Senate Bill 187 (77th Texas Legislature) to cover the costs of establishing a common electronic infrastructure for on-line license renewals by licensing agencies.

No comments were received concerning the amended section.

The amendments are adopted under the authority of the Texas Occupations Code, §801.154(a) which permits the Board to adopt rules setting reasonable license fees to cover the cost of administering the Veterinary Licensing Act.

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

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Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.2, 801.15, 801.19, 801.232, 801.265, and 801.300 concerning the licensure of marriage and family therapists. These sections are adopted without changes from the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4909), and therefore will not be republished.

Specifically, the amendments cover supervision hours, impartiality and nondiscrimination, fees, continuing education sponsors, surrender of license because of student loan default and suspension of a license for failure to be in compliance with child custody orders.

The amendments are pursuant to statutorial changes made to the Texas Occupations Code, Chapter 502, during the 77th Legislative Session. The amendments require that genetic information not be used in the discharge of statutory authority, examination fees will be in accordance with current contracted rates, continuing education sponsors will be required to renew annually, licenses will be surrendered in cases of student loan defaults and a reinstatement fee must be paid, and the licenses be suspended due to noncompliance with child custody orders.

No comments were received on the proposal during the comment period.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

The amendment is adopted under the Occupation Code, Chapter 502 which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the licensure and regulation of licensed marriage and family therapists.

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 7, 2002.

TRD-200207282
Marverene Oliver, Ed.D.
Chairperson
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 27, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER B. THE BOARD

22 TAC §801.15, §801.19

The amendments are adopted under the Occupation Code, Chapter 502 which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the licensure and regulation of licensed marriage and family therapists.

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 7, 2002.

TRD-200207283
Marverene Oliver, Ed.D.
Chairperson
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 27, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER J. LICENSURE RENEWAL AND INACTIVE STATUS

22 TAC §801.232

The amendment is adopted under the Occupation Code, Chapter 502 which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the licensure and regulation of licensed marriage and family therapists.

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 7, 2002.

TRD-200207284
Marverene Oliver, Ed.D.
Chairperson
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 27, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §801.265

The amendment is adopted under the Occupation Code, Chapter 502 which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the licensure and regulation of licensed marriage and family therapists.

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 7, 2002.

TRD-200207285
Marverene Oliver, Ed.D.
Chairperson
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 27, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §801.300

The amendment is adopted under the Occupation Code, Chapter 502 which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the licensure and regulation of licensed marriage and family therapists.

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 7, 2002.

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Marverene Oliver, Ed.D.
Chairperson
Texas State Board of Examiners of Marriage and Family Therapists
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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, 821.57

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57, the repeal of §821.11 and §821.13, and new §821.28 concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students and orthotic and prosthetic facilities. Sections 821.2, 821.5, 821.6, 821.19, 821.21, 821.23, 821.39, and 821.43, are adopted with changes to the proposed text as published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7710). Sections 821.1, 821.3, 821.4, 821.7, 821.9, 821.15, 821.17, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.41, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57, the repeal of §821.11 and §821.13, and new §821.28 are adopted without changes to the proposed text and will not be republished.

The amendments cover introduction, definitions, the board's operation, public information, fees, general application procedures, general licensing procedures, examinations for licensure, acquiring licensure as a uniquely qualified person, licensing by examination, licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistance, technician registration, temporary license, provisional license, student registration, accreditation of prosthetic and orthotic facilities, standards,

guidelines and procedures for a professional clinical residency, license renewal, continuing education, change of name and address, complaints, professional standards and disciplinary provisions, licensing persons with criminal backgrounds, default orders, surrender of license, suspension of license for failure to pay child support, civil penalty, program accessibility, consumer notification, and petition for the adoption of a rule. The repeals cover licensing by exemption from the license requirements and licensing by examination under special conditions requiring application by the 181st day after rules are adopted. The new section covers upgrading a student registration, temporary license or provisional license.

These sections provide for the licensing and regulation of orthotists, prosthetists, assistants, technicians, students and orthotic and prosthetic facilities. 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 821.1 - 821.7, 821.9, 821.11, 821.13, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57 have been reviewed and the board has determined that the reasons for adopting these sections continue to exist; however the language of these sections has been updated, clarified and simplified. The sections are amended to further protect the public, eliminate unnecessary language, improve grammar and style, correct errors and omissions, harmonize the various sections, harmonize the sections with the Texas Occupations Code and the Family Code, establish new fees, increase specific existing fees, eliminate references to repealed sections, correct references and keep the rules in Texas Register format. The repeals eliminate sections no longer needed. The new section provides an administrative procedure for converting a student registration, provisional license or temporary license to a regular, renewable practitioner license after the applicant passes the required examination.

The board published a Notice of Intention to Review the sections in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6985). No comments were received regarding the publication of this notice.

The board is making the following minor changes due to staff comments to improve the clarity and accuracy of the rules.

Change: Concerning §821.2(19), "a" was changed to "A" at the beginning of the definition.

Change: Concerning §821.5(b)(23), a colon was changed to a semicolon.

Change: Concerning §821.6(f)(9), "as" was added and "of" was deleted after the word "practice". Also, §821.6(g), "fourteen" was changed to "14" to be consistent with the number format in the last two sentences of the paragraph.

Change: Concerning §821.11, the title of the repeal was published incorrectly. It was published as "Licensing by Exception form the License Requirements" and corrected to state "Licensing by Exemption from the License Requirements".

Change: Concerning §821.19(d), the word "complete" was changed to "completed".

Change: Concerning §821.21(c)(3), "one thousand" was changed to "1,000" to be consistent with number format.

Change: Concerning §821.23(b)(2), the semicolon was deleted at the end of the paragraph.

Change: Concerning §821.39(e)(2)(A)(i) and (iii), the severity levels regarding complaints were in reverse order compared to the severity levels used for other programs within the Professional Licensing and Certification Division (PLCD). Level I was changed to Level III, and Level III was changed to Level I, making Level I the highest severity level. Also, in §821.39(e)(2)(G), a comma at the end of the subparagraph was changed to a semicolon.

Change: Concerning §821.43(b)(3), last sentence, the word "in" was deleted because it was not grammatically correct.

The following comment was received concerning the proposed rules. Following the comment is the board's response.

Comment: Concerning §821.35, relating to continuing education, the commenter requested that the board consider allowing continuing education credits for participating in activities relating to serving as an examiner for the clinical examination administered by the American Board for Certification in Orthotics and Prosthetics (ABC). The commenter stated that ABC awarded examiners up 23.75 credits for the first time orientation/training is completed and five credits each time thereafter, not to exceed twice within a five-year period. The commenter stated the credits were based in part on the mandatory examiner orientation given before each exam that included a detailed review of pathology, biomechanics, prescription recommendations and anatomy. The exam itself is two days of constant ongoing peer review as to correct orthotic and prosthetic applications and problem solving. Before each exam section, a pre-exam session serves as a "mini" in-service on that topic and specifications of the clinical issues.

Response: The board agrees with the commenter regarding the credits earned by examiners. The activities described for the first time orientation is approved by ABC and would be considered to be a "workshop," which is an activity already accepted by the board for continuing education credit under §821.35(i)(2)(C). No changes were made to the rules based on the comment.

One individual commented on the proposal. The commenter expressed a concern about the ability to receive continuing education credit for the training of examiners and duties performed by examiners. The commenter was neither for nor against the amendments, repeals and new section as proposed.

The amendments and new section are adopted under Texas Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

§821.2. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in these rules:

(1) Act--The Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605.

(2) Ancillary patient care service--Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.

(3) Board--The Texas Board of Orthotics and Prosthetics.

(4) CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

(5) Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner or a licensed assistant.

(6) Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner in an accredited facility.

(7) Clinical resident--A person who is completing a clinical residency for a professional or a clinical residency for an assistant.

(8) Comprehensive orthotic care--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthoses including plastic forming, metal contouring, cosmetic covering, upholstering and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthoses; the maintaining of current encounter notes and patient records. The practitioner with comprehensive orthotic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(9) Comprehensive prosthetic care--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, upholstering, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with comprehensive prosthetic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(10) Critical care events--Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function of the prosthesis or orthosis.

(11) Custom-fabricated--A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.

(12) Custom-fitted--A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(13) Department--Texas Department of Health.

(14) Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervisor must review, and sign-off patient care notes made by the clinical resident.

(15) Indirect supervision--Supervision provided to a clinical resident by a practitioner or licensed assistant, if the clinical residency is for an assistant who is available to provide on-site supervision within 60 minutes during the fitting and delivery process, and who will sign-off the resident's clinical records within ten working days. Indirect supervision is not appropriate for critical care events.

(16) License--Includes a license, registration, certificate, accreditation, or other authorization issued under this Act to engage in an activity regulated under this Act.

(17) Licensed orthotist (LO)--A person licensed under this Act who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthosis," "orthoses," "orthotic," or a similar title or description of services.

(18) Licensed orthotist assistant (LOA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed orthotist responsible for the assistant's acts.

(19) Licensed physician--A physician licensed and in good standing with the Texas State Board of Medical Examiners.

(20) Licensed prosthetist (LP)--A person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prosthesis," "prostheses," "prosthetic," "artificial limbs," or a similar title or description of services.

(21) Licensed prosthetist assistant (LPA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed prosthetist responsible for the assistant's acts.

(22) Licensed prosthetist/orthotist (LPO)--A person licensed under this Act who practices both prosthetics and orthotics and represents the person to the public by a title or description of services that includes the terms "prosthetics/orthotics," "prosthetist/orthotist," "prosthetic/orthotic," "artificial limbs," "brace," "prosthesis," "prostheses," "orthosis," "orthoses," or a similar title or description of services.

(23) Licensed prosthetist/orthotist assistant (LPOA)--A person licensed under this Act who assists and is supervised at a prosthetic and orthotic facility by a licensed prosthetist/orthotist or a licensed prosthetist and licensed orthotist responsible for the assistant's acts.

(24) Licensee--Includes a person or facility holding a current license, registration or accreditation issued by the board, to engage in an activity regulated under this Act.

(25) Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, a truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(26) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(27) Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician, chiropractor, or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(28) Orthotist in charge--An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(29) Person--An individual, corporation, partnership, association, or other organization.

(30) Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(31) Profession of prosthetics or orthotics--Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(32) Prosthesis--A custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(33) Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician, chiropractor, or podiatrist.

(34) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(35) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(36) Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(37) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(38) Registered orthotic technician--A person registered under this Act who fabricates, assembles, and services orthoses under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(39) Registered prosthetic technician--A person registered under this Act who fabricates, assembles, and services prostheses under the direction of a licensed prosthetist, licensed prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(40) Registered prosthetic/orthotic technician--A person registered under this Act who fabricates, assembles, and services prostheses and orthoses under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, or a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(41) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

§821.5. Fees.

(a) General. Unless otherwise specified, the fees established in this section must be paid to the board before a license, registration, or accreditation is issued. Fees may be submitted as a personal check, business check, money order, or certified check if paid by mail. If submitted in person, the cashier may accept cash. Fees are non-refundable.

(b) Schedule of fees. The board has established the schedule of fees as follows:

(1) prosthetist or orthotist license or license renewal--$300;

(2) prosthetist/orthotist license or license renewal--$400;

(3) prosthetist or orthotist assistant license or license renewal--$200;

(4) prosthetist/orthotist assistant license or license renewal--$250;

(5) prosthetic or orthotic technician registration or registration renewal--$100;

(6) prosthetic/orthotic technician registration or registration renewal--$150;

(7) prosthetic or orthotic student registration or registration renewal--$75;

(8) prosthetic/orthotic student registration or registration renewal--$100;

(9) prosthetist or orthotist temporary license or temporary license renewal--$150;

(10) prosthetist/orthotist temporary license or temporary license renewal--$200;

(11) prosthetist or orthotist provisional license or provisional license renewal--$300;

(12) prosthetist/orthotist provisional license or provisional license renewal--$400;

(13) prosthetic or orthotic facility accreditation or accreditation renewal--$400;

(14) prosthetic/orthotic facility accreditation or accreditation renewal--$500;

(15) license, registration, or accreditation duplicate or replacement--$25;

(16) orthotic or prosthetic examination--shall be determined by the Texas Department of Health (department) and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;

(17) upgrade for student registrant, provisional licensees and temporary licensees after passing the examination:

(A) one category--$200;

(B) two categories--$300;

(18) license reinstatement following suspension of a license under the Family Code--the renewal fee for the license or registration and an additional $100;

(19) returned check--$25;

(20) written license/certification verification--$25 each;

(21) adding orthotics or prosthetics to a facility accreditation issued in one category, including the designation of a practitioner in charge for the new category--$400;

(22) changing the location or name of an accredited facility--$400;

(23) changing the ownership of an accredited facility--$400; and

(24) changing the name of the on-site practitioner in charge of an accredited facility--$100.

(c) Returned checks. Returned checks will be subject to the following procedure:

(1) A licensee, registrant, or accredited facilities, whose check is returned due to insufficient funds, account closed, payment stopped, or other reason, shall remit a money order or check for guaranteed funds to the board within 30 days of the date of the board's notice.

(2) The application or renewal shall be considered incomplete until the replacement fee has been received and cleared through the appropriate financial institutions.

(3) If a license, registration, accreditation, or renewal has already been issued, it shall be invalid until the replacement fee is received.

(4) If a money order or check for guaranteed funds is not received within 30 days of the date of the board's notice, the board shall notify the applicant and the applicant's employer that the application is incomplete or the license, registration, or accreditation has been invalidated due to a returned check.

(d) Review of the fee schedule. The executive director shall make periodic reviews of the fee schedule and recommend adjustments necessary to provide sufficient funds to meet the expenses of the board without creating an unnecessary surplus. Adjustments shall be made through rule amendments approved by the board.

§821.6. General Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures, provided for in the Texas Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §§605.252 - 605.255 and §§605.257 - 605.259. Unless the context clearly shows otherwise, use of the terms license, licensure, and licensing shall apply to both licenses and registrations.

(b) General.

(1) Unless otherwise indicated, an applicant must submit the required information and documentation of credentials on official board forms.

(2) The board office will accept completed applications from persons seeking licensure under the Act.

(3) The board will not consider an application as officially submitted until the applicant pays the appropriate fee. The initial licensing fee must accompany the application form, as set out in §821.5 of this title (relating to Fees).

(4) The executive director shall review the applications for conformity with the rules governing applications. The executive director will send a notice listing the additional materials required to applicants who do not complete the application. An application not completed within 30 days after the date of the board's notice may be voided.

(5) Family Code §231.02 requires the disclosure of the applicant's social security number. Social security numbers are used for identification purposes and are confidential except to the child support enforcement division of the Office of the Attorney General.

(c) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, birth date, place of employment, a list of all previous jobs held during the six-year period prior to the date of application to the board, licenses and certifications issued to the applicant, misdemeanor and felony convictions, educational and training background;

(B) information regarding Texas residency at the time of application, if required to qualify for licensure;

(C) specific and complete information regarding prosthetic and/or orthotic work experience to include:

(i) verifiable information regarding length of time the applicant provided comprehensive prosthetic or orthotic care as defined in §821.2 of this title (relating to Definitions) in the State of Texas and outside the State of Texas;

(ii) verifiable information regarding length of the applicant experience as a prosthetic or orthotic assistant or technician; and

(iii) names and addresses of two persons who are not relatives and who are either a licensed physician familiar with prostheses and/or orthoses, or a practitioner, as set out in §821.2 of this title, who will attest to the applicant's experience providing comprehensive prosthetic and/or orthotic care.

(D) a statement that the applicant has read and agrees to abide by the Orthotics and Prosthetics Act and board rules;

(E) the applicant's permission for the board to obtain information or references it deems fit to decide the applicant's qualifications and fitness before or after the board issues the license;

(F) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information that is material in determining the applicant's qualifications may result in the voiding of the application and failure to grant a license or the revocation of a license issued;

(G) a statement that the applicant shall advise the board of his or her current mailing address within 30 days of an address change;

(H) a statement that the applicant, if issued a license, shall return the license to the board upon the surrender, revocation or suspension of the license;

(I) a statement that the applicant understands that fees submitted in the licensure process are not refundable, unless the processing time is exceeded without good cause as set out in subsection (i)(2)(A) - (B) of this section;

(J) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are not returnable; and

(K) the signature of the applicant, dated and notarized.

(2) The board will accept as proof of completion of a degree or course work an official transcript from regionally accredited college or university.

(3) Applicants shall be responsible for submitting board reference forms from a total of two licensed physicians or practitioners who can attest to the applicant's skills and professional standards of comprehensive prosthetic and/or orthotic practice.

(4) One passport-type photograph, 1-1/2 inches by 1-1/2 inches minimum in size, taken within the two year period before application, signed on the reverse side with the applicant's signature as it appears on the application.

(5) Information concerning licenses, certificates or registrations issued to the applicant by other organizations, states, territories, or jurisdictions on official board forms.

(6) The assistant applicant must sign a statement acknowledging that he or she may only practice within their scope of practice, under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the assistant is subject to disciplinary action as set forth in §821.39 of this title (relating to Complaints). This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(7) The technician applicant must sign a statement acknowledging that he or she may only practice in accordance with the definition for registered orthotic technician, registered prosthetic technician, or registered prosthetic/orthotic technician, as set out in §821.2(38) - (40) of this title (relating to Definitions), under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.39 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(8) At the time of application, an applicant for a license as a prosthetist, orthotist, or prosthetist/orthotist must submit with the application the names of assistants, technicians and clinical residents who provide prosthetic and/or orthotic services under the applicant's supervision or direction. The licensee shall notify the board, in writing within 30 days of the event, if one or more assistants, technicians or clinical residents are no longer under the licensee's supervision or direction, or if the licensee supervises or directs one or more additional assistants, technicians, or clinical residents.

(d) Optional application materials. Applicants may submit curriculum vitae, a resume, and other documentation of credentials. Those items shall not substitute for documents or information required by this section.

(e) Determination of eligibility. The board shall make the final determination on the eligibility of all applicants. The board may delegate approval of applications for licensing or registration to the executive director or a committee of the board. All applications approved by a committee or the executive director are subject to ratification at the next regular meeting of the board.

(f) Disapproved applications. Should the board disapprove an application, the reasons for disapproval will be stated in writing. The applicant may file further information for the board's consideration regarding the applicant's qualifications for the license. The board may disapprove an application if the applicant:

(1) has not met the eligibility and application requirements for the license for which application was made;

(2) has failed to pass the examination prescribed in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist), if required to qualify for the license for which application was made;

(3) has failed to remit required fees;

(4) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or other form or documentation required by the board to verify the applicant's qualifications for a license;

(5) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;

(6) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, prosthetist/orthotist assistant, prosthetic technician, orthotic technician, prosthetic/orthotic technician;

(7) has intentionally or negligently failed to file a report or record required by law;

(8) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;

(9) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice as established by the board in §821.41 of this title (relating to Professional Standards and Disciplinary Provisions);

(10) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness.

(11) has failed to report a known violation of the Act by another person to the department;

(12) has violated a provision of the Act, a rule adopted under the Act, an order of the board previously entered in disciplinary proceedings, or an order to comply with a subpoena issued by the board;

(13) has had a license revoked, suspended, or otherwise subjected to adverse action or been denied a license by another licensing authority in another state, territory, or country;

(14) has been convicted of or pled nolo contendere to a crime directly related to prosthetic and/or orthotic practices;

(15) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities; or

(16) has committed a prohibited act under the Act, §§605.351 - 605.353.

(g) Applications proposed for disapproval. If the board determines that the application should not be approved, the executive director shall give the applicant written notice of the reason for the proposed disapproval and of the opportunity for a formal hearing as set out in

§821.39(h) of this title. Within 14 days after receipt of the written notice, the applicant shall give written notice to the executive director to waive or request a hearing. If the applicant fails to respond within 14 days after receipt of the notice of opportunity or if the applicant notifies the executive director that the hearing be waived, the board shall finally deny the application.

(h) Reapplication after denial. An applicant whose application has been disapproved under subsection (f)(4) - (16) of this section may reapply after one year from the disapproval date and shall submit a current application, the application fee and proof, satisfactory to the board, of compliance with the requirements of these rules and the provisions of the Act in effect at the time of reapplication.

(i) Defaulters on Texas guaranteed student loans. The board will issue an initial license to a qualified applicant who has defaulted on a Texas guaranteed student loan. The board will not renew the license until a repayment plan has been reached with the Texas Guaranteed Student Loan Corporation (TGSLC) and a copy of the certification of the repayment agreement from TGSLC is filed with the board office.

(j) Application processing.

(1) The board shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from receipt of a completed application 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 renewal--21 days; and

(ii) letter of application deficiency--21 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) letter of approval--42 days; and

(ii) letter of denial of license or registration--90 days.

(2) The board shall comply with the following procedures in processing refunds of fees paid to the board.

(A) In the event an application is not processed in the times stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of fees paid in that particular application process. The applicant should apply to the executive director for reimbursement. 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 licensure, registration or renewal exceeds by 15% or more, the applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay, or another condition exists giving the board good cause for exceeding the time.

(3) If the executive director denies a request for reimbursement under paragraph (2) of this subsection the applicant may appeal to the board for a timely resolution of a dispute arising from a violation of the times. The applicant shall give the board written notice, at the board's address, that the applicant requests full reimbursement of 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 good cause for exceeding the applicable time. The board shall provide written notice of the decision to the applicant and the executive director. The board shall decide an appeal in favor of the applicant if the applicable time was exceeded and good cause was not established. If the board decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) The times for contested cases related to the denial of licensure, registration or renewal are not included with the times listed in paragraph (1) of this subsection. The time for conducting a contested case hearing runs from the date the board receives a written hearing request until the board'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 board meetings.

§821.19. Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

(a) Purpose. The purpose of this section is to establish the scope of practice and the qualifications for licensure for a licensed assistant under the Orthotics and Prosthetics Act, (Act), §605.255.

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the direct supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the direct supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant.

(3) A licensed prosthetist/orthotist assistant performs the type of work described in both paragraphs (1) and (2) of this subsection and is subject to the supervision requirements described there.

(4) Assistants may only practice in a facility accredited under §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities), or a facility that is exempt under the Act, §605.260(e).

(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) at least an associate degree from a college or university accredited by a regional accrediting organization such as the Southern Association of Schools and Colleges that included at a minimum:

(A) six credit hours of anatomy and physiology;

(B) three credit hours of trigonometry or higher mathematics;

(C) three credit hours of physics or chemistry; and

(2) a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, completed in a period of not more than six consecutive months, in a facility that is accredited under §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities) or a facility that is exempt under the Act, §605.260(e). The resident shall practice under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. A licensed assistant may supervise a clinical resident, provided a licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist assumes responsibility for the acts of the licensed assistant and the clinical resident. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic and/or orthotic facility or its patients or clients.

(B) The clinical residency shall include observation of assistant level work covering assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, depending on the type of residency.

(C) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist.

(D) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(E) The clinical resident may only be incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(d) Beginning and ending a clinical residency for an assistant. Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the board by filing a completed supervision agreement with the board on a form prescribed by the board. The supervisor shall provide the clinical resident and the board with written documentation upon beginning, terminating or completing a clinical residency. If terminating or completing a residency, the written documentation shall indicate the number of hours, which comply with this section that were completed by the clinical resident.

§821.21. Technician Registration.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a registration as a prosthetic technician or an orthotic technician issued under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §605.259.

(b) Supervision requirements. A technician must be supervised by a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant licensed by the board. The supervisor should consider the strengths and weaknesses of the individual technicians.

(c) General requirements for technician registration. To qualify for a registration as a technician, an applicant must submit:

(1) proof of a current supervisory relationship or tentative supervisory relationship, as described in subsection (b) of this section;

(2) a photocopy notarized as a true and exact copy of an unaltered:

(A) official diploma or official transcript indicating graduation from high school;

(B) certificate of high school equivalency issued by the Texas Education Agency or the appropriate educational agency in another state, territory, or country; or

(C) official transcripts from a regionally accredited college or university, showing that the applicant earned at least three semester hours of credit; and

(3) documentation, acceptable to the board, showing that the applicant has not less than 1,000 hours of laboratory experience as:

(A) a prosthetic technician. The experience claimed must meet the definition of the "registered prosthetic technician" as described in §821.2 of this title (relating to Definitions); or

(B) an orthotic technician. The experience claimed must meet the definition of the "registered orthotic technician" as described in §821.2 of this title.

§821.23. Temporary License.

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a temporary license as a prosthetist, orthotist, or prosthetist/orthotist issued under the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, §605.257.

(b) General requirements. To qualify for a temporary license, a person must:

(1) have become a Texas resident as defined in §821.2 of this title (relating to Definitions), within the 12 month period preceding application for a temporary license;

(2) apply for a license as a prosthetist, orthotist or prosthetist/orthotist under §821.15 of this title (relating to Acquiring Licensure as a Uniquely Qualified Person) or §821.17 (relating to License by Examination); and

(3) have either:

(A) practiced orthotics regularly since January 1, 1996; or

(B) been licensed as a prosthetist, orthotist, or prosthetist/orthotist by the state governmental licensing agency in the state in which the applicant resided immediately preceding the applicant's move to Texas. The licensing requirements in that state must be equal to or exceed the requirements of this title.

(c) Requirements for continued practice in Texas. To continue practicing prosthetics and/or orthotics the temporary license holder must meet the requirements of either §821.15 of this title or §821.17 of this title and pass the appropriate board examination as set out

in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist). The examination must be passed while the temporary license is current and not expired.

(d) Issuance of a temporary license. A temporary license is valid for one year from the date issued.

(e) Renewal requirements. A temporary license may be renewed once for one additional one year period if the applicant:

(1) applies for renewal on or before the expiration date of the initial temporary license; and either

(2) is registered to take the next scheduled examination or has taken an examination under §821.9 of this title during the year immediately preceding the date of the application for temporary license renewal; or

(3) presents evidence, satisfactory to the executive director of good cause for renewal. The executive director may consult with a board member in order to determine if sufficient evidence has been presented.

(f) Supervision of a temporary licensee. The board does not require supervision. However, the individual's strengths and weaknesses should be considered by those employing or directing a temporary licensee.

§821.39. Complaints.

(a) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has violated the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, Chapter 605 or these rules.

(2) A person wishing to file a complaint against a person licensed by the board or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive director's office. The mailing address is, Texas Board of Orthotics and Prosthetics, 1100 West 49th Street, Austin, Texas 78756-3183. Telephone: (512) 834-4520.

(3) Upon receipt of a complaint, the executive director shall send to the complainant an acknowledgment letter and, if additional information is needed, the board's complaint form, for the complainant to complete and return to the executive director. If the complaint is made by a visit to the executive director's office, the form may be given to the complainant then.

(4) The department shall investigate anonymous complaints if the complaint provides sufficient information and if the information relates to a violation of the Act or this chapter.

(b) Investigation of complaints.

(1) The executive director is responsible for resolving complaints.

(2) The department shall investigate a complaint as requested by the executive director, and report the findings to the executive director.

(3) If the executive director determines that the complaint does not come within the board's jurisdiction, the executive director shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency.

(4) The executive director, on behalf of the board, shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition.

(5) The executive director may recommend that a license be revoked, suspended, or application be denied, or that the licensee be placed on probation or that other appropriate action as authorized by law be taken.

(6) The board may delegate the authority to the executive director to dismiss a complaint. The executive director shall dismiss the complaint and give written notice of the dismissal to the complainant, respondent, and other interested parties if the executive director determines that insufficient grounds exist to support the complaint.

(7) The executive director may issue letters of warning or advisory letters for minor violations of the Act or these rules. These letters may be used as evidence at a disciplinary hearing held concerning conduct of a person committed after receipt of the letter.

(c) Board assistance in processing complaints.

(1) The presiding officer may appoint one board member who is a licensed orthotist and one board member who is a licensed prosthetist to help the executive director in processing complaints. The board may overrule an appointment only upon the vote of four board members to do so.

(2) The presiding officer may appoint one or more licensed prosthetists and orthotists who are not board members to serve as consultants to the executive director. These appointments are subject to the approval by a majority of the board. The consultants may not be paid for their services.

(3) The executive director may call upon one appointed board member and one or more consultants for assistance to resolve a particular complaint, as needed.

(4) Board members who participate in processing a complaint will not participate in the decision concerning a final order in that matter.

(5) An appointed board member or consultant will review the complaint and the proposed action by the executive director when revocation, suspension, or denial of licensure is proposed.

(d) Board oversight of processing complaints.

(1) The executive director will prepare and present a report reflecting the status of the complaints received to the board at each board meeting.

(2) The report will include the number of complaints received, the nature of the complaints made, action taken on the complaint, and the extent to which appointed board members or consultants have helped in processing complaints.

(3) The board will either approve or not approve the executive director's report and provide guidance to help the executive director in processing complaints as appropriate.

(e) Formal disciplinary actions.

(1) The board may take the following formal disciplinary action for a violation of the Act or these rules: deny a license, registration, or facility accreditation; suspend or revoke a license, registration, or facility accreditation; probate the suspension of a license, registration, or facility accreditation; issue a reprimand to a licensee, registrant, or accredited facility, or impose a civil penalty pursuant to the Act, §605.354.

(2) The board shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) severity of the offense, as follows.

(i) Severity Level III violations are those that have or had no significance or a minor significance on health or safety.

(ii) Severity Level II violations are those that have or had the potential to cause an adverse impact on the health or safety of a patient or client, but did not actually have an adverse impact.

(iii) Severity Level I violations are those that have or had an adverse impact on the health and safety of a patient or client;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of disciplinary actions taken against the licensee, registrant or accredited facility;

(F) the length of time the licensee has practiced orthotics or prosthetics;

(G) the length of time the registrant has practiced orthotics or prosthetics or worked as a technician;

(H) the length of time the facility has provided orthotics or prosthetics;

(I) the actual damage, physical or otherwise to the patient, client or other person in the workplace;

(J) the deterrent effect of the penalty imposed;

(K) the effect of the penalty upon the livelihood of the licensee, registrant or accredited facility;

(L) any efforts for rehabilitation by the licensee or registrant;

(M) any corrections or changes in the operation of or the staffing of the facility;

(N) any other mitigating or aggravating circumstances.

(3) Before institution of formal disciplinary action the department shall give written notice by certified mail, return receipt requested, and regular mail, of the facts or conduct alleged to warrant the proposed action, and the licensee, registrant, or accredited facility shall be given an opportunity to show compliance with the requirements of the Act and these rules.

(4) The written notice will be sent to the last reported address on record for the licensee, registrant, or accredited facility, and state that a request for a formal hearing must be received, in writing, within 14 days of the date of the notice, or the right to a hearing shall be waived and the action shall be taken by default. Notice sent to the last reported address is deemed received by the licensee, registrant, or accredited facility, and a default order may be entered upon failure to timely request a hearing whether or not the notice was received.

(f) Informal hearings.

(1) A licensee, registrant, or accredited facility may request that the executive director consider holding an informal hearing. The executive director has the discretion to grant or deny this request, and will grant the request only if it appears that an informal hearing may resolve the disciplinary matter.

(2) An assigned board member or consultant may attend the informal hearing if requested to do so by the executive director.

(3) The complainant and other interested parties with knowledge of relevant facts will be notified if an informal hearing is to be held, and may attend.

(4) The informal hearing will be conducted in the manner established by the executive director and consistent with department procedures. Parties will be afforded a reasonable opportunity to present their position regarding the matter at issue.

(g) Formal hearings.

(1) If requested in accordance with subsection (e) of this section, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and 25 Texas Administrative Code, Chapter 1 (Texas Board of Health).

(2) Copies of the formal hearing procedures are indexed and filed in the executive director's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

(h) Agreed orders.

(1) Disciplinary actions may be resolved by agreed order any time.

(2) The executive director may negotiate the terms of an agreed order with the licensee, registrant, or accredited facility; however, the agreed order is not effective until accepted by the board.

(i) Probation. Any reasonable term or condition of probation may be included in an order.

§821.43. Licensing Persons with Criminal Backgrounds.

(a) Purpose. The purpose of this section is to comply with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations.

(b) Guidelines. The board may deny an application or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registration holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines.

(1) Licensees and registrants are required to conduct the profession of prosthetics and orthotics with honesty, trustworthiness, and integrity. Those criminal convictions that show unwillingness or inability to follow these requirements may be a basis to deny a license or begin disciplinary action against an existing license.

(2) The factors and evidence listed in the Texas Occupations Code, Chapter 53, shall be considered in determining eligibility for a license or registration.

(3) The executive director will review the criminal convictions and determine what disciplinary action should be taken, and may ask that an appointed board member or consultant help in making the decision. The executive director shall give written notice to the person that the board intends to deny, suspend, or revoke the license after hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. The written notice must include:

(A) the reasons for the decision;

(B) notice that the person, after exhausting administrative appeals, may file an action in district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(C) notice that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) notice of the earliest date the person may appeal.

(c) Applicant responsibilities. It is the responsibility of the applicant to obtain and send the board the recommendations of the prosecution, law enforcement, and correctional authorities regarding offenses. The applicant shall also furnish proof, in documentation acceptable to the board, that he or she has maintained a record of steady employment, supported his or her dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which he or she has been convicted.

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 7, 2002.

TRD-200207321
Stanley E. Thomas
Presiding Officer
Texas Board of Orthotics and Prosthetics
Effective date: November 27, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 458-7236

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22 TAC §821.11, §821.13

The repeals are adopted under Texas Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.227 and 115.240 - 115.249, concerning the control of gasoline vapors from storage vessels and dispensing facilities. The commission also adopts revisions to the state implementation plan (SIP) narrative, Stage II Vapor Recovery Program SIP Revision. The commission will submit these amended rule sections and revised SIP narrative to the United States Environmental Protection Agency (EPA) as revisions to the SIP. Sections 115.240, 115.243 - 115.245, 115.247, and 115.249 are adopted *with changes* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6197). Sections 115.227, 115.241, 115.242, 115.246, and 115.248 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted the Stage II rules and SIP narrative on October 16, 1992 (revised on November 10, 1993) to satisfy gasoline vapor recovery requirements of the Federal Clean Air Act (FCAA), §182(b)(3) (codified as 42 United States Code (USC), §7511a(b)(3)). EPA requires that all Stage II vapor recovery systems be capable of achieving at least 95% vapor control efficiency. As an alternative to testing each station for 95% control efficiency, states can require that installed systems be certified by the California Air Resources Board (CARB), certified using CARB test procedures and methods, or certified by equivalent test procedures and methods developed by the state and submitted as a SIP revision. Texas' current rules follow the CARB certification procedures. The CARB is currently implementing an enhanced vapor recovery (EVR) program with a completion date of April 2003, after which it will no longer certify non-EVR systems. The purpose of the CARB EVR program is to increase control efficiency to 98%. In lieu of incorporating the CARB EVR program, the commission is adopting requirements for more frequent testing of vapor recovery systems at gasoline dispensing facilities and for installing or retrofitting Stage II systems in order to be compatible with onboard refueling vapor recovery (ORVR) equipment required on newer vehicles. Specifically, the commission is changing the five-year requirement for full system tests to a one-year requirement, with the exception of the TXP-101 vapor space manifold and the TXP-103 dynamic back- pressure test in the *Vapor Recovery Test Procedures Handbook* (test procedures handbook or RG-399), which will be required every three years. Also, to decrease the amount of excess emissions caused by incompatibility between ORVR and Stage II vapor recovery systems, the commission will require new Stage II systems to be ORVR compatible beginning in 2005 and existing vacuum assist Stage II systems to be retrofit or replaced to be ORVR compatible by 2007. By doing so, the commission believes that the increased testing frequency and ORVR compatibility requirement will continue to satisfy the federal requirement to maintain a vapor recovery rate of 95%. The commission adopts these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC).

SECTION BY SECTION DISCUSSION

Throughout this rulemaking the outdated term "undesignated head" has been replaced with the correct term "division" in response to revised *Texas Register* rules published in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289). The name of the commission has been changed to the Texas Commission on Environmental Quality because the rules will become effective after the date the name change occurred,

September 1, 2002. The term "commission" has been changed to "executive director" in each location where the action being taken is directly associated with the executive director or staff. In addition, various stylistic and editorial changes have been made to comply with the current *Texas Register* Form and Style Manual. Justification for these changes will not be discussed any further in this preamble other than to point out where each change was made.

Subchapter C, Division 2, Stage I Vapor Recovery

The amendments to §115.227, Exemptions, remove language that could potentially provide a Stage I exemption for a facility that is required to have Stage II vapor recovery. All Stage II vapor recovery systems must include Stage I vapor recovery in order to operate properly. The amendments also add section titles the first time each section is referenced in §115.227.

Subchapter C, Division 4, Stage II Vapor Recovery

The amendments to §115.240, Stage II Vapor Recovery Definitions, include stylistic changes previously discussed in this preamble. The amendments delete the definition *independent small business marketer of gasoline* because the term is no longer used in this division. The amendments also provide additional definitions for industry-specific terminology presented in the rules, which include the definitions for *onboard refueling vapor recovery* and *onboard refueling vapor recovery (ORVR) compatible*. The amendments add a table listing the Stage II vapor recovery systems certified by a CARB Executive Order and change the section title to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

The amendments to §115.241, Emissions Specifications, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, Counties and Compliance Schedules, where it more appropriately belongs.

The administrative and stylistic amendments to §115.242, Control Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249 where it more appropriately belongs, and change "undesignated head" to "division." The amendments to §115.242(2) correct two section numbers and titles in reference citations to 30 TAC Chapter 334; delete two reference citations to §115.249 which no longer apply; spell out the acronym "UL" as "Underwriters Laboratories"; and delete one superfluous reference to the acronym TNRCC.

The technical amendments to §115.242 clarify which CARB-certified Stage II vapor recovery systems would be authorized for use by the executive director. Also, the amendments allow the executive director to continue to recognize any Executive Orders which CARB decertifies in the future. Due to the federal mandate requiring motor vehicle manufacturers to make vehicles equipped with ORVR, the incompatibility between ORVR and Stage II vapor recovery is addressed because this incompatibility may prove to be a new source of emissions. In order to maintain SIP integrity and to prevent new emissions, the amendments include a compliance schedule for gasoline dispensing facilities to upgrade their Stage II vapor recovery systems to be ORVR compatible. The amendments also eliminate the requirement to post the "TNRCC Stage II Vapor Recovery Hotline" on each gasoline dispensing pump equipped with a Stage II vapor recovery system. The majority of the calls received on this hotline should be directed to either the Texas Department of Agriculture Weights and Measures for issues involving price discrepancies at the pump or to the facility owner or operator for customer service inquiries. Finally, other control requirements have been updated to ensure that the vapor recovery systems operate at the prescribed 95% level of efficiency.

The amendments to §115.243, Alternate Control Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. In addition, the title of the division was added to §115.243(2).

The amendments to §115.244, Inspection Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. The reference to §115.242(3)(I) in §115.244(1) was deleted because it is unreasonable for facility representatives with vacuum assist systems to determine whether or not a vacuum producing device is "inoperative or defective" under all circumstances. The word "utilize" has been replaced with the word "use" in §115.244(2).

The administrative and stylistic amendments to §115.245, Testing Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. The title of the test procedures handbook has been changed to "Vapor Recovery Test Procedures Handbook" and the regulatory guidance number (RG-399) and date of the current handbook have been added. The amendments also delete several superfluous references to the acronym TNRCC, and change "TNRCC" to "executive director" in several locations because the executive director (or staff) is responsible for program management. Finally, the name of the commission has been changed in one location.

The technical amendments to §115.245 provide a directive to use the most recent vapor recovery test procedures handbook, add language to allow air-to-liquid ratio (A/L ratio) testing for assist systems, add references to third-party certification, and require annual compliance testing of Stage II equipment to ensure that the equipment is operating properly. Full system testing, with the exception of TXP-101 vapor space manifold testing and TXP-103 dynamic back-pressure testing, must be accomplished at least once in each 12-month period. TXP-101 and TXP-103 testing must be performed at least once in each 36-month period. The terms "12-month period" and "36-month period" are used in the calendar sense and are not meant to imply a specific number of days. For example, if a full system test was completed in a given month, such as October 2003, then another full system test must be done at some time in the subsequent 12-month period from November 1, 2003 through the end of October 2004. If a full system test was done on October 5, 2003, then the facility has until October 31, 2004 to complete the next full system test. If the facility waited until October 31, 2003 to do the next full system test, the following test would still be due no later than October 31, 2004. However, if the facility made an "early" full system test on August 15, 2004, regardless of the reason the test was conducted earlier than required, then the following system test would be due no later than August 31, 2005. Finally, the commission will implement a registry of testers who have certified their knowledge of the test procedures handbook.

The amendments to §115.246, Recordkeeping Requirements, remove the reference to specific nonattainment areas as being

subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. Other amendments include changing the term "undesignated head" to "division" in accordance with *Texas Register* rules, changing the legalistic term "pursuant to" to "under" in two places to comply with the current style guidance, and changing references from the "TNRCC" to the "executive director" in two locations because the executive director (or staff) is the more appropriate recipient of facility records.

The amendments to §115.247, Exemptions, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs, and delete one superfluous reference to the Texas Natural Resource Conservation Commission. In addition, the word "his" has been deleted from §115.247(2).

The amendments to §115.248, Training Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs; delete one superfluous reference to the TNRCC; and change "TNRCC" to "executive director" in several locations because the executive director (or staff) is responsible for program management.

The amendments to §115.249, Counties and Compliance Schedules, specify the counties in which these rules apply; delete the compliance dates which have passed and change the language to "shall continue to comply with"; and add the compliance schedule for ORVR compatibility. The compliance schedule for ORVR compatibility has been changed from proposal because the commission will be conducting a mid-course review for the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas, which will be submitted to EPA by May 2004. The commission has committed to perform modeling with MOBILE6, the latest version of EPA's emission factor model for mobile sources, as part of this review. Establishing a motor vehicle emissions budget using MOBILE6 is one of the key components of the mid-course review. In addition, the mid-course review will address all aspects of the SIP including the Stage I and Stage II vapor recovery program. Therefore, the commission has changed the compliance deadline for the installation of all new ORVR compatible systems from April 1, 2004 to April 1, 2005 to accommodate any policy changes that may arise from the mid-course review. The amendments also changed the term "undesignated head" to "division."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this rulemaking action is to protect the environment and reduce risks to human health from environmental exposure to ozone by keeping gasoline vapor recovery rates at the 95% prescribed level of efficiency. The amendments may have an adverse material impact on a sector of the economy or a sector of the state. Gas station owners and operators in the four ozone nonattainment areas (16 counties) in the state will be required to pay approximately $200 more per year in testing costs, and those that need to upgrade their gas dispensing systems to become ORVR compatible will incur an expense of approximately $1,100 per dispenser, or up to approximately $20,000 per facility, depending on the specific technology they choose to implement.

Although the amendments meet the definition of a "major environmental rule" as defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action is not subject to the regulatory analysis provisions of §2001.0225(b), because the amendments do not meet any of the four applicability requirements. Specifically, the amendments implement requirements of 42 USC, §7511a(b)(3), (c), and (d) and Texas Health and Safety Code (THSC), §§382.002, 382.011, 382.012, 382.019, and 382.208. The commission invited public comment on the draft regulatory impact analysis determination, but received no comments.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates this action is being taken to reasonably fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). Specifically, this rulemaking action amends the Stage II gasoline vapor recovery rules and SIP narrative required under 42 USC, §7511a(b)(3), (c), and (d). The specific purpose of this rulemaking action is to continue to satisfy the provisions of 42 USC and to maintain a vapor recovery rate of 95%. The amendments substantially advance this stated purpose by updating control requirements of vapor recovery systems at gasoline dispensing facilities, requiring more frequent testing of these systems, and requiring these facilities to upgrade their Stage II vapor recovery systems to be compatible with newer, ORVR-equipped vehicles. Facilities that do not upgrade their incompatible Stage II vapor recovery systems may prove to be a new source of emissions, thus weakening the SIP integrity.

Nevertheless, the commission further evaluated this rulemaking action and performed an analysis of whether this action would constitute a takings under Chapter 2007. The specific purpose of these amendments is to continue to satisfy federal requirements for vapor recovery from gasoline dispensing facilities in nonattainment areas of the state. The amendments substantially advance this stated purpose by requiring more frequent testing and upgrading of vapor recovery systems at these gasoline stations. Promulgation and enforcement of these amendments would be neither a statutory nor constitutional taking of private real property. Specifically, the amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these amendments are adopted to continue to meet the requirements of 42 USC, §7511a(b)(3) and THSC, §382.019 and

§382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities. Some gas station owners and operators may be required to install or modify Stage II vapor control equipment that will make the gas dispensing systems ORVR compatible; however, the existing Stage II rules follow the CARB certification process for vapor recovery equipment. CARB is implementing an enhanced program that will require installation of more costly equipment than the alternative adopted in these amendments to Chapter 115. In addition, the alternative in these amendments will continue to provide benefits to society by maintaining vapor recovery rates at 95% efficiency. Therefore, these amendments will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CPM goals and policies. The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period, but received no comments.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin, Texas, on August 8, 2002, at 2:00 p.m., at the commission central office located at 12100 Park 35 Circle, Building F, Room 2210. The comment period closed at 5:00 p.m. on August 12, 2002. The following commenters submitted testimony on the proposal: B & B Testing, Inc. (B & B); EPA; Industry Council on the Environment (ICE); Oncor, formerly TXU Electric & Gas (Oncor); Rice Christ Incorporated (RCI); Sierra Club, Houston Regional Group (Sierra-Houston); Tanknology; UST Services, Inc. (UST Services); Valero Energy Corporation (Valero); Strasburger & Price, LLP, on behalf of 7-Eleven, Inc. (7-Eleven); and one individual.

The commission also received, 39 days after the close of the comment period, an American Petroleum Institute (API) sponsored report entitled *Refueling Emission Controls at Retail Gasoline Dispensing Stations in Texas*, dated July 16, 2002. This report will be evaluated during the mid-course review of the SIP, which will be submitted to EPA by May 2004, because the report is based on the new EPA MOBILE6 model, the latest version of EPA's emission factor model for mobile sources.

RESPONSE TO COMMENTS

EPA and RCI expressed general support of the proposal. No commenter expressed general opposition to the proposal. B & B, ICE, Oncor, Sierra-Houston, Tanknology, UST Services, Valero, 7-Eleven, and one individual suggested changes and/or expressed concerns regarding the proposed rule language.

General Comments

Valero commented that it generally supports the proposed rules as stated as a financially less burdensome method to maintain compliance with Stage II systems at 95% efficiency. EPA commented that it agrees in principle with the proposed rule changes and supports the proposed changes to the testing requirements in §115.245(2). RCI stated that it is in favor of the proposed rule change for personal and business reasons. ICE commented that it believes the proposed changes to the regulations will accomplish the objectives defined in the preamble and help owners and operators of gasoline dispensing facilities achieve the prescribed efficiency of their Stage I and Stage II vapor recovery systems. UST Services stated that it generally believes the proposal will improve the quality of operation of Stage II systems.

The commission appreciates the support and agrees that the adopted rules will improve the quality of operation of Stage II systems, will better ensure Stage II system compliance, and are financially less burdensome than the CARB EVR program.

Sierra-Houston commented that the commission should implement the California EVR program.

The commission appreciates the comment. However, the commission has determined that a theoretical 3% increase in efficiency using developing technologies, such as in-station diagnostics and dripless nozzles, does not appear to warrant such substantial capital costs to owners and operators of gasoline dispensing facilities in the State of Texas. Nevertheless, the commission acknowledges that dispensing gasoline from a Stage II vapor recovery system into ORVR- equipped vehicles presents pressure-related concerns in addition to the pressure-related fugitive emissions normally occurring at gasoline dispensing facilities. Therefore, the commission opted to implement an ORVR compatibility requirement. ORVR compatible Stage II vapor recovery systems are currently available in the market; therefore, the commission determined that implementing ORVR compatibility in concert with more frequent compliance testing is the best course of action to ensure that fugitive emissions do not increase as a result of a changing vehicle population. The commission made no changes in response to this comment.

Compliance Date

Sierra-Houston commented that the proposed implementation date of April 1, 2007 for recently installed vacuum assisted systems will leave little time for these controls to begin reducing VOC levels, and little time for the commission and other air enforcement agencies to ensure the controls have been installed. Sierra-Houston recommended November 15, 2005 as an alternative compliance date.

Regarding the determination of compliance deadlines, the commission's initial concern was determining when, or if, the federal requirement for Stage II vapor recovery would be repealed as a result of the introduction of ORVR systems on motor vehicles. Under the FCAA, the EPA administrator has the exclusive authority to rescind the Stage II vapor recovery requirement once EPA has determined that vehicles equipped with ORVR controls are in "widespread use." Pending official guidance from the EPA on this matter, the commission referred to the EPA document, *Frequently Asked Questions on MOBILE6*, January 16, 2002, which states, "...the full fleet effect of ORVR will not be in place until 2030, assuming all vehicles over 25 years are negligible." The commission also referred to the EPA document entitled, *Stage II Vapor Recovery and the Revised National Ambient Air Quality Standards (NAAQS)*, November 3, 1998, which states, "It will take 15 to 20 years for onboard controls to be fully phased in depending on fleet turnover rates for an area." Therefore, the commission does not believe that EPA intends to repeal the Stage II requirement for at least 15 to 30 years. Due to the uncertainness of a widespread use determination, the commission decided the environmentally responsible solution would be to retrofit or replace existing Stage II vapor recovery systems to be ORVR compatible, and to require all systems installed in the future to be ORVR compatible.

In order to frame appropriate compliance deadlines, the commission examined the current population of registered vehicles in Texas, examined the availability of replacement assist systems (currently CARB certified as ORVR compatible), and contacted Stage II vapor recovery manufacturers to project when potential retrofits (including CARB EVR systems which meet the ORVR compatibility requirements) may be available. Based on the review of all available information, the commission is confident that the 2007 compliance date will ensure continued VOC reductions and provide a reasonable amount of time for the Stage II industry to design, test, certify, market, and install new technologies that meet, and perhaps even surpass, the requirements.

ORVR Compatibility Requirement

EPA requested support documentation that replacement nozzles with a check valve will solve the ORVR vapor growth problem. EPA stated that nozzle manufacturers indicate they will solve the ORVR vapor growth problem, but underground storage tank vent line manufacturers allege the systems will require a control device on the vent line (permeable filter, carbon absorber, or afterburner are proven technologies) to mitigate vent line emissions. Valero also raised concerns about the cost of meeting ORVR compatibility requirements, citing $1,100 per dispenser for nozzle sensor technology as cost effective, whereas vapor processor (membrane) methods may cost up to $30,000 per facility. ICE expressed concern about the cost and availability of equipment for upgrading existing systems by 2007.

The commission is confident that both nozzle technologies and membrane technologies are viable solutions to the ORVR compatibility issue. At the beginning of the rulemaking process, the commission estimated a $1,100 nozzle replacement cost in anticipation that replacement nozzle technologies would be developed and marketed by manufacturers of existing vacuum assist systems. Healy Systems, Inc. currently holds two CARB certifications, CARB Executive Orders G-70-186 and G-70-191, for ORVR-compatible vacuum assist Stage II systems. Both of these systems utilize a patented technology dubbed the "smart nozzle." This nozzle uses a device that senses the change in the vehicle fill pipe pressure when fueling ORVR-equipped motor vehicles using a specialized vapor escape guard and a pressure-sensing diaphragm.

Furthermore, Gilbarco indicated to the commission that it is developing several technologies to address the ORVR compatibility issue. One option is a nozzle that employs the use of hydrocarbon sensor technology. Another option is a membrane processor. The commission has been assured by Gilbarco that it intends to test these and other technologies for CARB certification. Based on Stage II test results submitted for fiscal year 2001, over 50% of the Stage II systems in Texas are a Gilbarco/Marconi VaporVac model.

Presently, there are no Stage II systems with membrane processors certified to meet the ORVR compatibility requirement. However, the commission understands that one manufacturer is currently testing a membrane system with CARB and other membrane system manufacturers are expected to test with CARB in the near future.

The commission reiterates that it is important for owner/operators to communicate with their respective manufacturers to determine what kind of retrofit, if any, will be made available to them. The commission has taken measures to facilitate every possible option; nonetheless, if manufacturers do not produce retrofits, then the owner/operators must replace their Stage II vapor recovery systems with either balance systems or vacuum assist systems certified to be ORVR compatible. The commission is confident that should this unlikely scenario occur, the implementation time line in these rules will allow gasoline dispensing facility owners/operators sufficient time to find the most cost-effective solution available. The EPA-requested documentation regarding replacement nozzles with check valves will be provided to EPA under separate cover.

RCI commented that for every 10,000 gallons of fuel dispensed where all motor vehicles are equipped with ORVR, approximately 20 gallons of fuel will be lost in the form of vapors.

The commission appreciates the comment. Information made available by manufacturers and other industry experts has been valuable to the commission, particularly the information regarding the Stage II/ORVR compatibility issue. CARB estimates emissions reductions of 4.5 tons per day in California by instituting an ORVR compatibility requirement. A CARB District Survey dated October 2, 1998, stated that approximately 17% of gasoline dispensing facilities in the State of California are vacuum assist systems. However, approximately 90% of the gasoline dispensing facilities in the Texas nonattainment areas are vacuum assist systems. Therefore, the commission believes that the projected emissions savings resulting from the ORVR compatibility requirement will be significantly greater in Texas than those anticipated in California. The commission made no changes in response to this comment.

Stage II System Certification

EPA asked if Texas has a solution to the certification of new equipment if CARB does not continue to certify systems that do not meet CARB's enhanced rules.

The commission maintains that if EPA accepts third-party evaluations conducted by qualified independent testing organizations as appropriate for the purposes of certifying release detection methods for gasoline dispensing facilities, similar third-party evaluations for vapor recovery systems should be acceptable.

To date, an alternative to the CARB certification program has not been made available to Texas or other states. Most vapor recovery systems manufactured in the future will be CARB- certified under California's legislatively mandated EVR standards. These new standards are not currently required in Texas or in most other states. However, CARB has agreed, for a limited time, to certify systems for the ORVR compatibility module, independent of the certification testing for a complete EVR system (all six CARB modules).

In order to allow for fair market competition and to satisfy Texas' SIP requirements, the commission is allowing industry to certify vapor recovery systems via a third party using pre- EVR CARB methodology (CP-201, 1996 version). The CARB certification process requires that most of the costs to test and certify equipment be absorbed by the equipment manufacturers. However, CARB does fund some of the testing equipment and staff to oversee the testing. In the commission's third-party certification program, the third-party laboratory or engineering firm would provide the staff to oversee the testing at the expense of the equipment manufacturer. The commission staff will review a final report and provide an approval letter if the third-party company meets the agreed criteria. The commission has made no changes in response to this comment.

Stage II Tester Registry

Valero stated that it supports the certification of all testing companies and their personnel by the commission, an independent laboratory, or an industry trade association. ICE and Tanknology also stated that they support the registration (certification) of testers and the requirement that testers pass a proficiency test. 7-Eleven expressed some ambivalence about the proposed tester registry, but supported a stronger tester certification program with requisite training and an enforceable system to ensure tester competence and accountability. Based on the proposed annual Stage II testing requirements, 7-Eleven predicted that new testing companies will be attracted to the Texas market, and further stated that these new testing companies may not be competent in this field and will only be made accountable if they are faced with "imminent de-registration." 7-Eleven also cited the existing facility representative training requirements in §115.248 as a resource for the commission to review and approve Stage II-related curriculum. B & B stated that Stage II vapor recovery testing is just as important as tank, line, cathodic protection, and other tests that are performed at gasoline dispensing facilities, but that Stage II is the only testing that is currently allowed to be performed without a certification. B & B supported mandated certification of testers with independent training and a standard state test. UST Services stated that in order to achieve 95% efficiency, it is essential that the Stage II testers achieve a level of competency and that the state should have some degree of authority and jurisdiction in this area.

The commission shares the commenters' concern that Stage II vapor recovery equipment should be properly tested by competent technicians; however, the commission cannot implement their recommendations at this time. The Stage II vapor recovery program is authorized by THSC, Chapter 382, but there are no provisions in the THSC that explicitly authorize any type of occupational licensing or certification program for vapor recovery equipment installers, repair technicians, or testers. It is not commission practice to establish and regulate a licensing program without explicit statutory authority. The commission's licensing programs are based on the authority provided in Texas Water Code (TWC), Chapter 37. Although there is a precedent for requiring explicit statutory authority for the licensing or certification of occupational programs related to gasoline dispensing facilities that the commission currently administers, such as Underground Storage Tank Contractor Registration/Installers and Leaking Petroleum Storage Tank Corrective Action Specialist/Project Managers, there are no provisions in the TWC for the licensing of Stage II vapor recovery equipment testers.

An additional concern is the issue of staffing. The two primary methods of regulating such an activity are to hold the facilities accountable for the proper function of their equipment or to license the persons performing the function. The first method can be accomplished with the commission's current staffing while implementation of a licensing program will require additional staffing. Due to current staffing constraints, the commission is not presently in a position to dedicate the additional staff required to establish a new licensing program. Therefore, the commission made no changes in response to this comment.

Stage I Vapor Recovery

Valero supported the elimination of the potential Stage I vapor recovery exemption for a Stage II vapor recovery facility, but suggested that the commission eliminate the 125,000-gallon throughput exemption and require Stage I vapor recovery statewide to improve air quality. Valero commented that this would standardize the procedures used by fuel carriers and enhance the proper use of existing Stage I vapor recovery equipment. 7-Eleven commented that the commission should enact and enforce more stringent standards for documentation of vapor recovery during fuel deliveries and/or promote more stringent standards for the measurement of vapors returned to the gasoline terminals and gasoline bulk plants after delivery. 7-Eleven indicated that the resultant decreases in VOC emissions should be used to authorize SIP flexibility in Stage II vapor recovery implementation.

The commission disagrees that Stage I vapor recovery standards should be required throughout the state. While the commission agrees that implementing the Stage I vapor recovery criteria might standardize the procedures used by fuel carriers and enhance the proper use of existing Stage I vapor recovery equipment, the commission does not believe that promulgating Stage I vapor recovery standards statewide is crucial in achieving compliance with the NAAQS in the state's ozone nonattainment areas. The commission is also concerned that promulgating the Stage I vapor recovery standards throughout the state may place an unnecessary hardship on facilities which are located in counties that are in compliance with the NAAQS and in which aggregate gasoline emissions from the filling of storage tanks at motor vehicle dispensing facilities do not have a significant impact on the ozone nonattainment areas and near-nonattainment areas. With regard to 7-Eleven's comment about SIP flexibility, Stage II vapor recovery is a federally mandated VOC control and as such, it cannot be substituted with another VOC control to meet

the NAAQS. However, at the request of stakeholders the commission may reevaluate the Stage I requirements for the 95 attainment counties in central and eastern Texas in a subsequent rulemaking action. At that time, the commission would consider the comments provided by Valero and 7-Eleven regarding Stage I vapor recovery, including 7-Eleven's comment that the commission should include more stringent standards for gasoline distributors, terminals, and bulk plants when determining VOC reduction strategies. Therefore, the commission made no changes to the Stage I vapor recovery standards in response to these comments.

Equipment Issues

Valero stated that the proposed language regarding malfunctioning printers in §115.242(3)(K) will result in unfair enforcement for owners and operators who may have a properly functioning Stage II vapor recovery system.

Some systems are required in their CARB Executive Orders to possess system monitors because prior versions of these systems have demonstrated problems generating adequate vacuum thereby creating excess venting episodes. If the system monitor is out of paper or is malfunctioning in such a way that prevents the investigator from determining proper system operation, there has to be a mechanism in place that requires the owner/operator to replace or repair the monitor. Without a specific enforceable requirement, the problem may go unresolved. The commission agrees that, technically speaking, there may be no decrease in a system's ability to recover vapors, but the certification of a system requires that the operational status be available for inspection at all times. The commission inspection protocols would consider any infraction of this nature to be a recordkeeping violation.

Valero raised concerns that the proposed language in §115.244(1) was unreasonable for facility representatives with vacuum assist systems to be able to determine whether or not a vacuum- producing device is "inoperative or defective" or to determine if a crimped or flattened hose is affecting the performance of a Stage II system.

The commission concurs that it is unreasonable for facility representatives with vacuum assist systems to determine whether or not a vacuum producing device is "inoperative or defective" under all circumstances. Therefore, the commission deleted the reference to §115.242(3)(I) in §115.244(1). However, crimped or flattened hoses should be noted during daily inspections. It is the owner's/operator's responsibility to determine whether or not the crimped or flattened hose has created a vapor blockage. It is left to the discretion of the owner/operator to determine whether or not a crimped or flattened hose should be tested for a vapor blockage or replaced as a precautionary measure. If, upon inspection, a crimped or flattened hose is found, through test, to be blocked, a notice of violation can be issued.

Test Observation Program (TOP)

ICE and UST Services commented that the TOP will take up a lot of the commission's time, and will cost owners and operators more money. ICE and UST Services commented that the commission and the city (local programs) will only inspect about 20% of the facilities, as opposed to the previous program whereby the city inspected 100% of all facilities. ICE and UST Services commented that TOP will reduce compliance. UST Services commented that the commission needs to maintain a program to identify which sites are not complying. ICE commented that TOP will lead to greater vapor emissions.

ICE and UST Services suggested that the commission should randomly inspect 3.5% of the locations that have already been tested to assure they were properly tested. ICE and UST Services commented that, assuming that it would take about 2-1/2 hours to observe a test and that there are 2,500 sites, their plan would save the agency 6,031 man-hours. ICE and UST Services commented that the inspections would not have to be invasive and could be completed in 30 minutes; for example, the agency could conduct random nozzle tests or inspect the Stage I adapters with gauges. ICE and UST Services also commented that the data gathered via their program would provide the commission with information for new regulations and/or the SIP.

The commission believes that TOP activities will not occupy as much time as ICE and UST Services assume. The commission realizes that the rule will increase costs for owners and operators of the affected facilities, but believes that the costs will create no great burden. The commission believes that observing Stage II tests at 20% of the affected facilities is equivalent to inspecting 100% of the facilities because commission statistics show that when Stage II tests are observed by qualified enforcement officials, malfunctioning vapor recovery systems are more likely to be detected and repaired. This program will allow the commission to definitively determine which vapor recovery systems are operating at the certified efficiency, and will also allow the commission to ascertain which testers are following proper testing procedures. The commission also believes that working in conjunction with the local programs will provide sufficient work force to ensure full compliance with these rules and thereby, fewer vapor emissions.

The commission did not replace the TOP with the commenters' suggested program to randomly inspect 3.5% of the affected facilities that have already performed the required tests. The commission believes that the observation method that it has chosen to adopt will provide greater compliance by those affected by these rules, as it is more thorough, yet not as time consuming as the commenters suggested. The commission believes that it can also obtain more data to use in related future rules or SIPs by using the TOP as opposed to utilizing the commenters' random testing procedure. The commission has made no changes in response to this comment.

Vapor Recovery Test Procedures Handbook

Valero indicated that it welcomes changes to the test procedures handbook, but raised concerns that the handbook does not mention the 12-month test period that is stated in §115.245. Valero stated that the testing policy describing the 12-month period should be communicated clearly to all commission inspectors and owners/operators.

The commission agrees with the comment. Language which parallels wording in §115.245 regarding testing frequency will be added to the introduction of the published test procedures handbook.

Valero commented that the test procedures handbook defines the volume-to-liquid (V/L) test (TXP 106.1), but does not define the CARB A/L test procedure (TP-201.5) required in the CARB Executive Order G-70-150-AE for the Marconi (Gilbarco) Vapor-Vac System. Valero requested further clarification or examples regarding what kind of vapor volume meter will be acceptable for use.

In accordance with §115.245(1), the test procedures handbook takes precedence over any test procedure listed in the CARB Executive Order; however, several alternatives to TXP-106

have been approved by the executive director including CARB TP-201.5, VacuChek, and VacuSmart. If the TXP-106 or TP-201.5 tests are chosen, a RootsMeter is required. The VacuChek and VacuSmart alternative procedures require the VacuChek or VacuSmart, respectively.

Stage II Testing Issues

Valero, ICE, Tanknology, and UST Services commented that they support annual testing of Stage II systems for A/L, V/L, and pressure decay, but do not support an annual TXP-103 blockage test. 7-Eleven also challenged the necessity of an annual blockage test. Valero recommended that the blockage test be required only every three years. ICE and Tanknology recommended that the blockage test be required every three to five years. Valero, 7-Eleven, and UST Services stated that performing a blockage test more than once every five years is in excess of what needs to be done to maintain the 95% operating efficiency requirement at the site. They cited that the blockage test is designed to verify proper installation of the system, not necessarily proper system operation. 7-Eleven and UST Services also stated that the blockage testing requirement will cost facility owners approximately $150 to $200 per site per year to perform. Valero, ICE, and Tanknology all stated that they were concerned that opening the vapor lines under each dispenser in most facilities to introduce fuel into the line to perform the blockage test will compromise the integrity of the system.

The commission appreciates the comments regarding the proposed annual testing requirements. The commission's goal is to ensure that Stage II vapor recovery systems are maintained and tested to ensure the 95% operating efficiency requirement. It is important to test for blockages not only at the time of installation, but also periodically, because even properly installed Stage II systems have the possibility to develop problems over time, such as vapor blockages. Nevertheless, the commission shares the commenters' concerns about system integrity and has changed the requirement in §115.245(2) to require the TXP-103 test at least once every 36 months. However, in order to better ensure potential blockages are detected on a timely basis, the annual TXP-106 test procedure will be modified to include the introduction of a minimum quantity of gasoline at the termination of vapor return lines to provide an annual indication regarding system blockage without breaking piping junctions at each dispenser. Furthermore, any alternative method approved by the executive director (e.g., CARB TP-201.5) must also include an introduction of gasoline at the termination of the vapor return lines. Because TXP-101 poses similar problems for system integrity as TXP-103, the commission will also change the testing frequency requirement for TXP-101 to at least every 36 months.

Oncor stated that the existing language in the proposed rule establishes and by inference sets the price per year for the full system test at $550, and suggested changes to the preamble language. Oncor suggested that words such as "an average" be used in the language used to describe testing costs.

The commission agrees with the commenter. The commission did not intend to establish set costs for Stage II testing, and the preamble language has been changed to reflect estimated testing costs.

Aboveground Storage Tank (AST) Executive Orders

One individual noted the erroneous exclusion of AST Executive Orders in §115.240.

The commission agrees and has added the AST CARB Executive Orders to §115.240.

Recordkeeping Requirements

Valero, ICE, 7-Eleven, and UST Services commented on the proposed recordkeeping requirements. ICE and 7-Eleven commented that requiring records to be maintained on-site was too burdensome. Valero, 7-Eleven, and ICE commented that the proposed rule should allow owners and operators to maintain annual system testing records off-site, and 7-Eleven commented that records could be kept off-site and delivered to the regional office at the time of the ten-day notification of system testing. Valero and ICE commented that the on-site recordkeeping requirements should be minimized to the daily inspection logs, maintenance logs, and facility representative training records. Valero and ICE asserted that the remaining documents could be archived at a central location and made available within 48 hours. ICE and Valero commented that the enforcement of regulations regarding recordkeeping could take away from the commission's ability to enforce vapor recovery system compliance, postulating that recordkeeping violations could take up an inordinate amount of the commission's time that would otherwise be utilized to inspect noncompliant facilities. ICE and UST Services commented that the commission should consider following the recordkeeping requirements outlined in 30 TAC Chapter 334 for the Stage II test reports so as to provide consistency and simplification. They pointed out that if the rules for Stage II testing were consistent with the rules for tank and line testing, they would have time to produce the test results to the agency, or the agency could review its own files before performing the site inspections. Tanknology, Valero, and ICE commented that they support the testing requirements; however, they felt that the agency should examine the submitted test results to assure compliance with the regulations and create a database of the test results that is reconciled monthly. Tanknology, Valero, and ICE expressed the belief that such a process could be used to identify facilities that either have not submitted the results or have not performed the testing activity, which would thereby improve the efficiency of the agency inspections, improve compliance among facility owners, and ultimately improve the air quality.

The commission does not agree with the comments by 7-Eleven, Valero, and ICE that the recordkeeping requirements should be further modified to allow for off-site record retention. The amendments allow owners/operators 48 hours to produce records for unmanned facilities. The commission also does not agree that retention of these records on-site will place any undue burden on those affected by the rule, and believes that this requirement is crucial to enforcement of these rules. The commission also believes that these rules will be most effectively enforced if all required records are kept on-site as specified. Records must be kept on-site and made immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction so as to allow for proper administration of the rules by authorized personnel. The commission believes that on-site review of test records during inspections provides Field Operations Division personnel a perspective on the operation and maintenance at a particular facility over time. The commission prefers that records be kept on-site so as to facilitate unannounced inspections required in accordance with the SIP. The commission also disagrees with the comment by Valero and ICE that recordkeeping violations could take up too much of the commission's time that would otherwise be utilized to inspect noncompliant facilities. The commission believes that there are adequate resources to

enforce all aspects of the Stage I and II rules. The commission does not agree with the comments of ICE and UST Services that the proposed recordkeeping requirements should conform to the recordkeeping requirements outlined in Chapter 334 for the Stage II test reports. There are differences in the recordkeeping requirements because there are significant differences between Chapter 334 rules and these rules. The commission appreciates comments from Tanknology, Valero, and ICE that suggested the commission should examine the test results submitted to assure compliance with the regulations and create a test results database that is reconciled monthly. The commission believes that the current procedures are sufficient to assure compliance with the regulations. However, because the SIP has historically required 100% of the facilities to be inspected, commission and local program investigators have ordinarily reviewed test results on-site during annual Stage II investigations. During the pilot TOP, the commission tracked and recorded test results in a database. Due to staffing constraints, this practice was discontinued shortly after the pilot program final report was issued. With the implementation of the TOP, regional offices and contracted local programs will be independently tracking test results in databases. These databases will be used to determine which facilities have not performed the required testing according to the prescribed schedule.

DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.227

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

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 7, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.240 - 115.249

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§115.240. Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

(a) The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§115.10, 101.1, and 3.2 of this title (relating to Definitions).

(1) Onboard refueling vapor recovery - A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(2) Onboard refueling vapor recovery (ORVR) compatible - A vacuum assist Stage II vapor recovery system designed to prevent the ingestion of ambient air during the fueling of motor vehicles equipped with ORVR.

(3) Owner or operator of a motor vehicle fuel dispensing facility - Any person who owns, leases, operates, or controls the motor vehicle fuel dispensing facility.

(b) The table in the following figure is a list of the Stage II vapor recovery systems certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002.
Figure: 30 TAC §115.240(b)

§115.243. Alternate Control Requirements.

Alternate methods of complying with §115.242(1) of this title (relating to Control Requirements) may be approved by the executive director if:

(1) emission reductions are demonstrated to be equivalent or greater than those afforded by the requirements in §115.242(1) of this title; and

(2) the Stage II vapor recovery system is capable of meeting the applicable performance requirements prescribed in this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), as verified by third-party evaluation conducted by a qualified independent testing organization using a code or standard of practice, acceptable to the executive director, which has been developed by a nationally recognized agency, association, or independent testing laboratory.

§115.244. Inspection Requirements.

The owner or operator of any motor vehicle fuel dispensing facility subject to the control requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) shall conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(3) and (4) of this title (relating to Control Requirements) as follows.

(1) For all systems, the daily inspections shall include the applicable portions of §115.242(3)(A) - (F), (H), and (K), and (4) of this title.

(2) For assist systems that use a processor, indicating mechanisms designed by the Stage II vapor recovery equipment manufacturer to verify proper operation shall be inspected daily. Examples of these indicating mechanisms include flame detection sensors, remote (from the processor) visual or audible displays indicating system operation, or other means as described in the applicable Executive Order for the system.

(3) For all systems, the components listed in §115. 242(3)(J) of this title shall be inspected at least monthly.

(4) For all systems, the components listed in §115.242(3)(G) of this title shall be inspected at least annually.

§115.245. Testing Requirements.

For all affected persons, compliance with §115.241 and §115.242 of this title (relating to Emission Specifications and Control Requirements) shall be determined at each facility within 30 days of installation of the Stage II equipment by testing as follows.

(1) Stage II vapor recovery systems shall successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space shall be consistent with the Executive Order requirements for the installed system;

(ii) the sum of the vapor leaks in the system shall not exceed acceptable limits for the system as defined in the pressure decay test;

(iii) the maximum acceptable backpressure through a given vapor path shall not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system; and

(iv) the maximum gasoline flow rate through the nozzle shall not exceed the limits found in the Executive Order or third-party certification for the system.

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) shall be within acceptable limits.

(C) Each system shall meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board Executive Order. The criteria and test methods contained in the test procedures handbook specified in paragraph (1) of this section shall take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria shall take precedence.

(D) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and who will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(2) Verification of proper operation of the Stage II equipment shall be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months. The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and who will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air

pollution program with jurisdiction as soon in advance of the scheduled test as is practicable. For the purposes of this paragraph, a major system replacement or modification is defined as:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the replacement of an existing CARB-certified Stage II vapor recovery system with a system certified by CARB under a different CARB Executive Order, or certified by an approved third party under a third-party certification;

(C) the repair or replacement of any part of a piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of piping which is accessible for such repair or replacement without excavation or modification of the vapor recovery equipment; or

(D) the replacement of at least one fuel dispenser.

(3) Minor modifications of these test methods may be approved by the executive director.

(4) All required tests shall be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered shall begin on November 15, 1993, or 60 days after the executive director has established the registry, whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(5) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, shall be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

§115.247. Exemptions.

The following are exempt from the requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):

(1) gasoline dispensing equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture; and

(2) any motor vehicle fuel dispensing facility for which construction began prior to November 15, 1992, and which has a monthly throughput of less than 10,000 gallons of gasoline. For the purposes of this paragraph, the monthly throughput shall be based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. To maintain a facility's exempt status under this paragraph, the owner or operator must submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the executive director or designated representative.

§115.249. Counties and Compliance Schedules.

(a) The rules in this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) apply to affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties.

(b) All affected persons shall continue to comply with this division as required by §115.930 of this title (relating to Compliance Dates).

(c) All vacuum assist Stage II vapor recovery systems must be onboard refueling vapor recovery (ORVR) compatible according to the following schedules:

(1) all installations of vacuum assist Stage II vapor recovery systems installed on or after April 1, 2005, must be ORVR compatible; and

(2) all vacuum assist Stage II vapor recovery systems installed before April 1, 2005, must be upgraded to an ORVR compatible system no later than April 1, 2007.

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 7, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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CHAPTER 292. SPECIAL REQUIREMENTS FOR CERTAIN DISTRICTS AND AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §292.1

The Texas Commission on Environmental Quality (commission) adopts an amendment to §292.1 *without changes* to the proposed text as published in the July 26, 2002 issue of the *Texas Register* (27 TexReg 6662) which will not be republished. However, the name of Chapter 292 is being changed.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Chapter 292 requires districts that have been determined to function as river authorities to adopt administrative policies that will govern district activities and board member conduct. The commission identified 20 districts in 1992. Senate Bill (SB) 2, §1.01, 77th Legislature, 2001, created Texas Water Code (TWC), Chapter 9, which sets forth provisions regarding the creation and duties of the Texas Water Advisory Council. TWC, §9.010, identified 19 of the 20 districts included in the commission rules, plus an additional 11 that are required to submit information to the newly created Texas Water Advisory Council. TWC, §9.012, also required that the additional 11 districts be included in Chapter 292, but does not preclude the commission from retaining the

additional district that was already listed in Chapter 292. In addition, this rule is amended to reflect the current names of some of the districts.

The current name of Chapter 292, River Authorities, does not accurately reflect the nature of entities governed by the rules. Therefore, the commission is changing the name to "Special Requirements for Certain Districts and Authorities." A name change for Chapter 292 was requested by the Texas Water Conservation Association in a letter dated October 1, 2002. This letter was received outside of the comment period. However, after reviewing the request, the commission agreed that the title of the chapter should be changed, and the change is being included in this rulemaking.

SECTION DISCUSSION

The adopted amendments to §292.1, Objective and Scope of Rules, add the districts identified in TWC, §9.010, as required by SB 2. Those districts are: Bexar-Medina-Atascosa Counties Water Control and Improvement District Number 1, Central Colorado River Authority, Dallas County Utility and Reclamation District, Gulf Coast Water Authority, Mackenzie Municipal Water Authority, North Central Texas Municipal Water Authority, North Harris County Regional Water Authority, Sulphur River Basin Authority, Sulphur River Municipal Water District, Upper Colorado River Authority, and Upper Guadalupe River Authority.

Since adoption of the existing rules, name changes have occurred for three of the districts listed in SB 2 which are currently listed in commission rules. The names of these districts are being updated in this rulemaking. The districts include: Red River Authority, which is now Red River Authority of Texas; Tarrant County Water Control and Improvement District Number 1, which is now Tarrant Regional Water District, a Water Control and Improvement District; and Trinity River Authority, which is now Trinity River Authority of Texas. In addition, paragraphs (2) - (20) have been renumbered as a result of including the new districts. Subsection (b) is amended to change Texas Water Code to TWC to comply with formatting requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the statutory requirements for a "major environmental rule." "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The principal intent of this amendment is to implement the requirements of TWC, Chapter 9. TWC §9.012 requires the commission to expand the applicability of Chapter 292 to include the authorities subject to TWC, §9.010(b). Chapter 292 requires that certain entities defined as river authorities in the chapter enact specified policies. Currently, Chapter 292 identifies 20 districts. These adopted regulations include the entities listed in TWC, §9.010(b), that were not previously listed in the chapter. The specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this rulemaking does not meet the definition of "major environmental rule."

Furthermore, even if the amendment did meet the definition of a "major environmental rule," the amendment is not subject to §2001.0225, because it does not accomplish any of the four results specified in §2001.0225(a). First, there are no federal law standards relating to or applicable to oversight of river authorities and administrative policies that must be adopted by the authorities. Therefore, there are no applicable standards set by federal law that could be exceeded by this rule. Second, the adopted amendment seeks to carry out the statutory requirements to apply Chapter 292 to the districts listed in TWC, §9.010(b). Therefore, the rulemaking does not exceed an express requirement of state law. Third, there is no delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in the rule. Therefore, there are no delegation agreement requirements that could be exceeded by this rule. Fourth, the commission adopts this amendment in accordance with its requirements under the specific state law of TWC, §9.012. Therefore, the commission does not adopt the rule solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this adopted rule in accordance with Texas Government Code, Chapter 2007. The principal intent of this amendment is to expand the applicability of Chapter 292 to include the authorities subject to TWC, Chapter 9. This rulemaking implements the requirements of SB 2 by including the districts listed in TWC, §9.010(b), in §292.1(a), which lists the districts subject to the requirements of Chapter 292. Promulgation and enforcement of this adopted rule is neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the adopted rule does not affect a landowner's rights in private real property because this amendment does not burden private real property, nor restrict or limit a landowner's right to property, nor reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the rule. In addition, the adoption fulfills an obligation mandated by state law, which exempts such rulemakings from the requirements of Chapter 2007 under Texas Government Code, §2007.003(b)(4). Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENTS

No public hearing was held for this proposal. The public comment period ended on August 26, 2002, but no comments were received.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §5.013, which gives the commission continuing supervision over districts created under Article III, §52(b)(1) and (2), and Article XVI, §59, of the Texas Constitution; §12.081, which gives the commission the continuing right of supervision of the powers and duties of all districts and authorities created under Article III, §52, and Article XVI, §59 of the Texas Constitution; and §9.012, relating to Administrative Policies for Authorities.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §14.1

The Texas Department of Public Safety adopts an amendment to §14.1, concerning School Bus Transportation General Provisions, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7366).

Figure: 37 TAC §14.1(1), Medical Examination Report for School Bus Drivers has been amended to include the new updated Medical Examination Report for Commercial Driver Fitness Determination.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code (Driver Licenses and Personal Identification Cards).

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 5, 2002.

TRD-200207212
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 25, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 424-2135

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SUBCHAPTER B. SCHOOL BUS DRIVER ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §14.12

The Texas Department of Public Safety adopts an amendment to §14.12, concerning School Bus Driver Eligibility and Application Procedures, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7366).

The section has been amended to include the new United States Department of Transportation (DOT) physical form which was recently revised to clearly indicate when numerical readings must be recorded. Space is also provided on the form for recording any optional tests that the medical examiner considers necessary. The form also contains more detailed information for the Medical Examiner regarding the driver's role and the types of duties he or she may face as a result of his or her employment.

The section has also been formatted to require that school bus drivers when operating a school bus be required to carry the original or duplicate copy of form 391.43.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Transportation Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code (Driver Licenses and Personal Identification Cards).

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

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 51. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

The Texas Department of Human Services (DHS) adopts amendments to §§51.1-51.5, 51.7, and 51.31, and the repeal of §51.6, in its Waiver Program for Medically Dependent Children chapter. The amendments to §§51.1, 51.4, 51.7, and 51.31, and the repeal of §51.6 are adopted without changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6238). The amendments to §§51.2, 51.3, and 51.5 are adopted with changes to the proposed text published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6238).

Justification for the amendments and the repeal is to comply with Senate Bill 374, Section 1.28(c), of the 76th Texas Legislature, 1999, which transferred administrative control of the Medically Dependent Children Program (MDCP) from the Texas Department of Health (TDH) to DHS. The amendments complete this transfer of authority by correcting references within the rule. The repeal deletes outdated rule material pertaining to reimbursement methodology, since the Texas Health and Human Services Commission (HHSC) now has the authority for rate analysis and determination.

DHS received written comments from HHSC and the Texas Department of Protective and Regulatory Services (PRS) and an oral comment from the Aged and Disabled Advisory Committee (ADAC). A summary of the comments and DHS's responses follow.

Comment: PRS requests that DHS delete §51.3(b)(9)(B)(ii) to allow PRS children access to this waiver regardless of the level of foster care payment if other eligibility criteria are met. Access to these Medicaid Waiver services would facilitate the community placement of PRS children currently in institutions or at risk of institutional placement.

Response: DHS agrees and has deleted §51.3(b)(9)(B)(ii) and renumbered the paragraphs.

Comment: ADAC requests that §51.3(g) be amended, because the committee believes that the 35 calendar days from the date of the application transmittal letter allotted for the completion and return of all required application materials is not sufficient.

Response: DHS disagrees and believes that 35 days is sufficient time to complete and return all required application materials.

Comment: HHSC recommends that the cost definition allowance in §51.2(11) be amended to reflect current payment levels.

Response: DHS agrees and has changed the sentence to read, "A cost allowance is equal to 63% of the annual amount assigned to the participant's Texas Index for Level of Effort (TILE) designation for skilled nursing facility care."

Comment: HHSC requests that the reference in §51.2(23) be changed from the Texas Board of Human Services to HHSC. HHSC establishes the nursing facility payment rates.

Response: DHS agrees and has changed §51.2(23).

In addition to the changes indicated above, DHS has initiated four minor editorial changes to the text of §51.2 and §51.5 to clarify and improve the accuracy of the sections.

40 TAC §§51.1 - 51.5, 51.7, 51.31

The amendments are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

§51.2. Definitions.

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

(1) Adaptive aid--A device necessary to treat, rehabilitate, prevent, or compensate for conditions that result in disability or loss of function. Adaptive aids enable people to perform the activities of daily living or control the environment in which they live.

(2) Adjunct supports--A diverse array of approved, individualized, disability-related services that support participation in child care, post-secondary education, or independent living, or that support an imminent move to an independent living situation, and that may vary by child, provider, and setting.

(3) Applicant--An individual whose eligibility for waiver services is in the process of being determined. An individual becomes an applicant when he is next in line to fill a vacant position in the waiver program, a vacancy exists, the Texas Department of Human Services (DHS) has approved the filling of the vacancy, DHS has notified the individual, and the individual has submitted the required application materials to DHS within a specified time frame.

(4) Basic child care--Watchful attention and supervision by a designated provider in the absence of the primary caregiver during those hours when the caregiver is at work, in job training, or at school. Basic child care may be provided in a variety of settings, including a licensed day care center, a registered family home, the child's home, an after-school setting, or other usual child care setting. Basic child care is a service that is separate and distinct from educational services provided at a school where attendance is mandated and the primary focus of the institution is the accomplishment of specified academic goals. Basic child care is also separate and distinct from respite services that are provided when the primary caregiver normally would be available.

(5) Basic child care cost--The fee charged for the services provided in a specific child care setting for a child who does not have a disability or chronic illness. This fee may vary with age, type of setting, hours of service delivery, and community.

(6) Caregiving--Performance of activities and tasks required to meet the needs of the waiver participant. The performance of certain caregiving activities may be regulated by law or standards and/or may require specialized training or education.

(7) Care planning process--A collaborative activity, subject to established time frames, that results in the development of an Individual Plan of Care (IPC) and requires the primary caregiver to pursue all identified resources to be integrated into the IPC with authorized Medically Dependent Children Program (MDCP) services.

(8) Centers for Medicare & Medicaid Services (CMS)--An organizational division of the U.S. Department of Health and Human Services that is responsible for approval, monitoring, and oversight of state Medicaid programs.

(9) Child Care Management System (CCMS)--A child care system administered by the Texas Workforce Commission (TWC) that helps eligible parents by giving them more choices in child care arrangements and by helping them find and pay for qualified caregivers. Qualified caregivers may include child care centers, registered family homes, or the child's grandparent, aunt, or uncle. TWC establishes payment rates for CCMS-reimbursed child care services based on data analyses of local market costs for child care services.

(10) Comprehensive child care--A combination of basic child care, other support services mandated by state or federal law, other required program-specific requirements, and approved adjunct supports that enable the MDCP participant to use child care while the parent is at work, in job training, or at school.

(11) Cost allowance--The maximum dollar amount available for reimbursement for a participant's approved waiver services. A cost allowance is equal to 63% of the annual amount assigned to the participant's Texas Index for Level of Effort (TILE) designation for skilled nursing facility care. The actual annual dollar amount approved for an individual participant is less than or equal to the participant's cost allowance. This amount is determined during the development of the participant's IPC, and is based on factors that include the participant's assessed needs and the supports and other resources available to the child.

(12) Direct care--Hands-on care for or supervision of a participant. Respite and adjunct supports are direct-care services reimbursable through MDCP.

(13) Individual Plan of Care (IPC)--The instrument used to document the waiver and non-waiver services available to a specific program participant during the specified period of eligibility (typically one year), the sources/providers of those services, and the projected cost of the waiver services. The IPC is a separate document from the more detailed documents that may elaborate on its implementation.

(14) Interest list--A statewide listing of individuals ordered on a first-come, first-served basis who have indicated their interest in participating in the MDCP through submission of the MDCP Interest List Information Form. Inclusion on the interest list does not imply eligibility for MDCP.

(15) Minor home modification--A physical modification to a participant's home, required by the participant's IPC, that is necessary to prevent institutionalization or support deinstitutionalization.

(16) Participant--An individual who has been determined eligible to receive waiver services and who receives waiver services according to an IPC.

(17) Primary caregiver--An individual(s) responsible for a participant's routine daily care and the provision of food, shelter, clothing, health care, education, nurturing, and supervision. Primary caregivers may include but are not limited to parents, foster parents, guardians, or other family members by birth or marriage. A primary caregiver provides daily, uncompensated care for the participant; does not delegate caregiving responsibilities to paid providers a majority of the time; and participates in the development and implementation of the MDCP participant's IPC. Parents, primary caregivers, and members of the participant's household cannot be paid as that participant's provider(s) of MDCP services.

(18) Provider--An entity that has an agreement with DHS to provide authorized waiver services for MDCP participants for compensation according to approved IPCs.

(19) Qualified individual--An individual who may be eligible to become an MDCP participant under the conditions outlined in §51.3(c) of this title (relating to Participant Eligibility Criteria) for skilled nursing facility deinstitutionalization.

(20) Registrant--An individual whose name has been registered on the MDCP interest list after DHS has received his Interest List Information Form. A registrant has requested a determination of his eligibility in order to apply for waiver services.

(21) Respite--A service that provides temporary relief from caregiving to the primary caregiver of a waiver participant during times when the participant's primary caregiver normally would provide care.

(22) Service array--Home and community-based Medicaid services available to MDCP participants by virtue of their waiver eligibility.

(23) Texas Index for Level of Effort (TILE)--The system used to quantify the intensity of the care needs of individuals in Texas nursing facilities, and to assign daily reimbursement rates for that care. The Texas Health and Human Services Commission establishes TILE rates.

(24) Waiver--An exception to otherwise applicable requirements. A waiver approved by CMS under the Social Security Act, §1915(c), authorizes the MDCP to waive certain Medicaid requirements for the delivery of unique services to a specific population and to use unique requirements for determining program eligibility. The term "waiver" may be equated to "MDCP."

§51.3. Participant Eligibility Criteria.

(a) Applicant eligibility. To be an applicant of the Medically Dependent Children Program (MDCP), an individual must reside in Texas.

(b) Participant eligibility. To be a participant of the MDCP, an individual must:

(1) live in Texas;

(2) be under 21;

(3) be Medicaid eligible;

(4) participate in no other §1915(c) Medicaid waiver program;

(5) meet the medical necessity criteria for nursing facility care. Each applicant's/participant's medical necessity criteria must be assessed on the client assessment review and evaluation form. Reevaluations are performed at a minimum every 12 months using the same process;

(6) have a physician's signed approval that attests that the authorized and other specified services are necessary to avoid institutional placement and are appropriate to meet the participant's needs in the home. The physician-approved Individual Plan of Care (IPC) must specify health-related care needs and must document waiver services, non-waiver Medicaid services, and any other home and community-based services, as well as services and supports provided by the primary caregiver(s);

(7) have an IPC that documents the Texas Department of Human Services' (DHS's) plan to authorize and the participant's plan to use waiver services without an interruption in service delivery of more than 60 days;

(8) have an approved IPC for which the projected annual cost for waiver services does not exceed the established annual waiver service cost allowance. The allocation for direct-care waiver services (respite services and adjunct supports) for participants who are age 20 is prorated for the participant's remaining eligibility period. DHS may grant exceptions to the cost allowance for respite services or adjunct supports on a temporary basis when extenuating circumstances preclude the development or implementation of an IPC within the cost allowance. In such cases, approval depends upon DHS's review of the circumstances of the request; upon the availability of other resources, including family, volunteer, or community resources; and upon the waiver program's financial status. DHS may deny requests for exceptions to the annual cost allowance if vacancies in the waiver are frozen, if the program anticipates a budgetary shortfall, if the primary caregiver does not participate in identifying and pursuing other possible resources that must be used before waiver services, or if the request does not demonstrate that extenuating circumstances exist. A reduction in the annual cost allowance does not in itself constitute an extenuating circumstance. Following a review of the circumstances, DHS determines which category of exceptional funding is appropriate, as described in subparagraphs (A) and (B) of this paragraph. The specific amount approved within a given category is based on a budget developed to address the extenuating circumstances. Once approved, continuation of funding for each approved exception to the cost allowance is subject to periodic review and renewal.

(A) Category A. DHS may grant an exception to a participant's annual cost allowance not to exceed 10% of the participant's annual cost allowance if the existing extenuating circumstances will likely be resolved within six months.

(B) Category B. DHS may grant an exception to the participant's annual cost allowance under one or more of the special circumstances described in clauses (i)-(iv) of this subparagraph. The total amount allowable for exceptions under Category B may not exceed $5,000. Special circumstances include:

(i) the caregiving ability of the participant's sole primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of the caregiver;

(ii) the caregiving ability of the participant's primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of one of the participant's siblings, parents, grandparents, or other member of the participant's household; or due to the recent loss of another primary caregiver;

(iii) the participant's primary caregiver needs additional services to support provider training during a transition from one type of provider to another. An exception under this circumstance may not exceed $1,000; and

(iv) the participant has a severe immunological disorder or a similar medical condition that would make child care in a group setting a life-threatening situation; and

(9) meet the following requirements:

(A) the applicant or participant must be eligible for supplemental security income (SSI) benefits in the community; or

(B) the applicant or participant must meet SSI disability criteria and must:

(i) meet the institutional income and resource criteria established for the Texas Medicaid Program; or

(ii) be a member of a family that receives full Medicaid benefits as a result of qualifying for Temporary Assistance for Needy Families (TANF); or

(iii) qualify under other Medicaid Type Programs covered under the waiver.

(c) Deinstitutionalization.

(1) For purposes of this section, "deinstitutionalization" refers to an interagency agreement between the Texas Department of Human Services and the Texas Department of Health to support the permanent placement of current and previous resident children of Texas nursing facilities into their homes and community settings. The children targeted under this provision will have been in placement for continuous institutional long-term care purposes.

(2) "Placement for continuous institutional long term care purposes," refers to placement and subsequent residence in an institution for the purpose of meeting a registrant's ongoing needs when the child's needs cannot be met in the home on an ongoing basis. This excludes respite placements and placements for treatment of acute episodes.

(3) An MDCP interest/waiting list registrant may be considered for deinstitutionalization into MDCP at any time since September 1, 1995 if the registrant:

(A) has resided in a Texas nursing facility for continuous institutional long term care purposes; or

(B) has resided in another Texas institution, (i.e., an ICF-MR, hospital, long-term acute care setting), for continuous institutional long term care purposes, followed by residence in a Texas nursing facility;

(C) has been determined to be Medicaid eligible; and

(D) has met all of the criteria in subsection (b) of this section.

(4) The names of qualified individuals applying for nursing facility deinstitutionalization shall be maintained on a waiting list separate from that for other MDCP registrants.

(5) An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(A) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(B) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-base services.

(d) Applicant/participant choice. An eligible applicant or participant and his parent or guardian or both must be provided the option of:

(1) participating in the waiver program as specified in the IPC;

(2) being placed in institutional care; or

(3) refusing both options specified in paragraphs (1) and (2) of this subsection.

(e) Interest lists. Participants in the waiver program are selected from the MDCP interest list, which is maintained on a first-come,

first-served basis. The names of Medicaid-eligible, qualified individuals who complete the MDCP Interest List Information Form and who are residents of a Texas nursing facility as described in subsection (c) of this section are maintained on a separate interest list for nursing facility deinstitutionalization. Their participation in the waiver does not delay the entry of individuals who are not residents of a Texas nursing facility and whose names are maintained on the regular MDCP interest list. A registrant's interest list status is assured unless:

(1) the Interest List Information Form clearly indicates the individual does not qualify as a candidate for the waiver program; or

(2) the family or the registrant requests that the registrant's name be removed from the interest list.

(f) Medicaid eligibility date. A participant's Medicaid eligibility under the waiver is contingent upon the actual delivery of waiver services. For participants eligible for Medicaid only through this waiver, the effective date of Medicaid coverage coincides with the date the participant actually receives waiver services.

(g) Application deadline. If a registrant fails to complete and return all required application materials within 35 calendar days from the date of the application transmittal letter, the registrant's potential application is closed. In such a case, the registrant's name may be re-entered at the end of the interest list, upon request. Exceptions may be made following a review of special circumstances.

(h) Eligibility denial and exceptions. Unless an exception is made following a review of special circumstances, waiver eligibility is denied or terminated if:

(1) waiver services are not used as described in the IPC, unless:

(A) the participant is hospitalized;

(B) the planned waiver service provider is temporarily unable to comply with the participant's IPC;

(C) a replacement waiver service provider is being sought; or

(D) other non-waiver, non-Medicaid resources are being used temporarily;

(2) the applicant's/participant's primary caregiver fails to return a signed IPC within the specified time frame, not to exceed 30 days from transmittal of the unsigned document;

(3) the applicant's/participant's primary caregiver does not participate in the eligibility determination process, the care planning process, or the implementation of the IPC;

(4) the applicant's/participant's primary caregiver does not comply with the responsibilities enumerated in a departmental form that he has signed; or

(5) the IPC, inclusive of MDCP services, does not reflect a routine direct care contribution by the primary caregiver(s).

(i) Reduction in services. Waiver services may be reduced when:

(1) the need for waiver services decreases as determined during the care planning process;

(2) non-waiver resources become available;

(3) the primary caregiver does not participate fully in the care planning process;

(4) the participant's TILE score changes in such a way that the participant's annual cost allowance decreases;

(5) the rate(s) paid to MDCP providers increase and the participant's IPC is already at the maximum annual cost allowance;

(6) a time-limited exception to the annual cost allowance expires; or

(7) MDCP expenditures and budgetary considerations and constraints indicate that cost reduction is necessary.

§51.5. Waiver Services.

(a) Relationship of waiver services to other sources of caregiving and support.

(1) Individual Plans of Care (IPCs) must include services provided by parents and/or primary caregivers; non-waiver services; and waiver services.

(2) Waiver services are intended to support but not to supplant the role of the primary caregiver(s).

(3) If service needs can be met through Medicaid state plan services or other applicable services, those non-waiver resources must be used before waiver services.

(4) Waiver services are coordinated with other available resources, including Medicaid state plan services.

(5) Parents/caregivers are responsible for the cost of basic child care.

(A) The cost of basic child care is calculated based on:

(i) established and verifiable fees; or

(ii) recognized and accepted community-based child care data analyses, for example, those developed and used by the Child Care Management System (CCMS) of the Texas Workforce Commission.

(B) The total parental contribution to child care includes the cost of basic child care and may be affected by:

(i) the participant's eligibility for programs such as Head Start or the resources of the CCMS; or

(ii) the primary caregiver's decision to have basic child care services delivered in a more costly setting or by a more costly provider than is otherwise available and medically acceptable for the child.

(b) Waiver service array. In addition to Medicaid state plan services, the following services are available to a waiver participant when included in the participant's IPC and when unavailable from other sources:

(1) Respite services. Respite services may be provided by licensed registered nurses (RNs); eligible licensed vocational nurses (LVNs); licensed home and community support services agencies (HCSSAs) that provide skilled nursing services; licensed HCSSAs that provide personal assistance services with and/or without delegation by an RN; independently enrolled attendants who meet program participation standards as approved by the CMS; host families who meet the requirements for foster homes or who meet other program participation standards as approved by CMS; licensed child care facilities that meet state requirements for respite-care providers; licensed special-care facilities; licensed nursing facilities; licensed hospitals; and camps accredited by the American Camping Association. For accredited camps, reimbursement rates shall be based on those adopted by the Texas Department of Human Services (DHS) for the Community Living Assistance and Support Services (CLASS) Waiver program. Providers must operate within the scope of their licensure, accreditation, participation standards, or other applicable regulations.

(2) Adjunct supports. Adjunct supports may be provided either by the MDCP or by sources outside the MDCP waiver, and they may be provided on a one-time basis, on an ongoing basis, intermittently, or as the participant's condition, child care arrangements, or living arrangements change. To support participation in child care, adjunct supports are approved only for those hours when the primary caregiver is working, attending job training, or attending school. Adjunct supports may include, but are not limited to, the following:

(A) the reimbursement differential between the cost of a basic child care provider and a more costly, medically required provider such as an eligible LVN or RN;

(B) time-limited transitional support when a participant is moving to a more inclusive child care setting;

(C) limited modifications to an out-of-home, more inclusive child care setting where such modifications are not required by state or federal law or by program-specific regulation. Such modifications must meet the requirements for minor home modifications described in paragraph (3) of this subsection. Costs for approved modifications made under this subparagraph are not included in the calculation of the participant's lifetime allowance for minor home modifications. Such providers shall be reimbursed based on the lowest bid obtained for the approved modification. If required, administrative fees for coordination of modifications shall be based on the administrative fees established by DHS for coordination of minor home modifications in the Community Based Alternatives (CBA) Waiver program;

(D) child care-related transportation that is not required of the child care provider by state or federal law or by program-specific regulation, or which is not otherwise available in the community. Providers of child care-related transportation shall be reimbursed based upon the lesser of their established fees and the established Medicaid reimbursement rate for a comparable service/provider; and

(E) other services, related to the participant's disability, that support participation in post- secondary education or independent living, or that support an imminent move to an independent living situation.

(3) Minor home modifications. The MDCP reimburses qualified providers the cost of approved minor home modifications that are necessary to prevent the institutionalization or support the deinstitutionalization of an applicant/participant. For minor home modifications, reimbursement rates shall be based on the lowest of the comparable and responsible bids submitted for the approved modification. Administrative fees shall be based on those adopted by DHS for the CBA Waiver program.

(A) Covered modifications are limited to:

(i) the purchase and installation of permanent and portable ramps not covered by other sources;

(ii) the widening of doorways;

(iii) the modification of bathroom facilities; and

(iv) modifications related to the approved installation or modification of ramps, doorways, or bathroom facilities.

(B) Bids from qualified contractors are required.

(C) All services are provided in accordance with applicable state and local building codes.

(D) Modifications must be for existing structures, and must not increase the square footage of the dwelling.

(E) If alternative solutions exist, DHS approves modifications based on considerations of cost and comparable functionality. If more than one option is available, DHS approves the amount equivalent to the least costly option of comparable functionality. If the caregiver/participant selects a more costly option, the caregiver/participant is responsible for any costs that exceed those approved by DHS.

(F) There is a maximum lifetime allowance of $7,500 for approved minor home modifications. In addition, up to $300 per year is available for repair or replacement of these minor home modifications when such repair or replacement is not covered by warranty. The lifetime allowance is based on the participant's lifetime.

(G) DHS may establish an administrative fee for local agency coordination of these services.

(H) Expenses for minor home modifications, repairs and replacements not covered by warranty, and related administrative fees are budgeted within the participant's annual cost allowance.

(4) Adaptive aids. The MDCP reimburses qualified providers the cost of approved adaptive aids that are necessary to prevent the institutionalization or support the deinstitutionalization of an applicant/participant, that are related to the applicant's/participant's disability, and that have a manufacturer's suggested retail price of $100 or more. Reimbursement rates shall be based on the manufacturer's suggested retail price minus the weighted average percentage discount as authorized by the Texas Medicaid State Plan for providers of durable medical equipment. If the manufacturer does not offer a discount to the provider, the reimbursement rate will be the provider's cost plus a percentage, as authorized by the Texas Medicaid State Plan for providers of durable medical equipment. If bids are required, the reimbursement rate shall be based on the lowest bid obtained for the approved adaptive aid.

(A) Adaptive aids may include:

(i) van lifts with tie-downs; and

(ii) other items that are not covered by other sources.

(B) The maximum annual allowance for approved adaptive aids is $4,000. A portion of this amount may be used to support assessment, training, and installation related to the adaptive aids.

(C) Bids may be required for items that cost more than $1,000.

(D) Expenses for adaptive aids and related assessment, training, and installation and administrative fees are budgeted within the participant's annual spending allowance for adaptive aids and within the participant's annual cost allowance.

(c) Transition to new service array. The IPCs of all waiver participants will be revised to reflect the new waiver service array and applicable policies and procedures at the time of the IPC's annual renewal or upon interim reassessment. Participants may request interim reassessment before the date of their annual IPC renewal, but may not access more than one service array at a time.

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-200207180

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 24, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 438-3734

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40 TAC §51.6

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.038 and §§32.001-32.053.

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 24, 2002.

TRD-200207179
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 24, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance will consider a petition by the staff of the Texas Department of Insurance to amend the Texas Commercial Lines Statistical Plan - Farm & Ranch and Farm & Ranchowners modules. The proposed changes are necessary in order to collect experience data that will be used to analyze and track the use of the Insurance Services Office's (ISO) recently approved policy forms. Staff's petition (Ref. P-1102-42-I was filed on November 8, 2002.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period as defined herein.

Staff proposes amendments to the Texas Commercial Lines Statistical Plan to amend and add fields that will allow the reporting of experience relating to the use of ISO's recently approved Farm & Ranch and Farm & Ranchowners policy forms.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code Article 5.96 and §§38.204 and 38.207.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. P-1102-42-I).

Comments on the proposed amendments must be simultaneously submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, P. O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to C.H. Mah, Senior Associate Commissioner for Property & Casualty, P. O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

TRD-200207346
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 8, 2002

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Council on Alzheimer's Disease and Related Disorders

Title 25, Part 12

The Texas Council on Alzheimer's Disease and Related Disorders (council) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 12. Texas Council on Alzheimer's Disease and Related Disorders, Chapter 801. Procedures and Bylaws, §§801.1 - 801.4.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the council as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the council.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the council.

TRD-200207396
James W. Hinds
Chair
Texas Council on Alzheimer's Disease and Related Disorders
Filed: November 13, 2002

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Texas Diabetes Council

Title 25, Part 9

The Texas Diabetes Council (council) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 9. Texas Diabetes Council, Chapter 651. Conduct of Council Meetings, §§651.1 - 651.5.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the council as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the council.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the council.

TRD-200207395
Maria C. Alen, M.D.
Chair
Texas Diabetes Council
Filed: November 13, 2002

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 339. Toxicology, Subchapter A. Veterans Agent Orange Assistance Program, §§339.1 - 339.6.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200207399

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 13, 2002

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The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment, Subchapter H. Dental Utilization Review, §§33.331- 33.334, 33.351 - 33.358.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200207404
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 13, 2002

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Texas Statewide Health Coordinating Council

Title 25, Part 6

The Statewide Health Coordinating Council (council) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 6. Statewide Health Coordinating Council, Chapter 571. Health Planning and Resource Development, §§571.1 - 571.7.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the council as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the council.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the council.

TRD-200207393
Ben G. Raimer, M.D.
Chair
Texas Statewide Health Coordinating Council
Filed: November 13, 2002

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Texas Medical Disclosure Panel

Title 25, Part 7

The Texas Medical Disclosure Panel (panel) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 7. Texas Medical Disclosure Panel, Chapter 601. Informed Consent, §§601.1 - 601.8.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the panel as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the panel.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the panel.

TRD-200207394
Melba W.G. Swafford, M.D.
Chair
Texas Medical Disclosure Panel
Filed: November 13, 2002

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Toxic Substances Coordinating Committee

Title 25, Part 14

The Toxic Substances Coordinating Committee (committee) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 14. Toxic Substances Coordinating Committee, Chapter 1001. Meetings, §§1001.1 - 1001.6.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the committee as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200207397
Judy Henry, M.S.
Chair
Toxic Substances Coordinating Committee
Filed: November 13, 2002

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC Chapter 25--Preamble

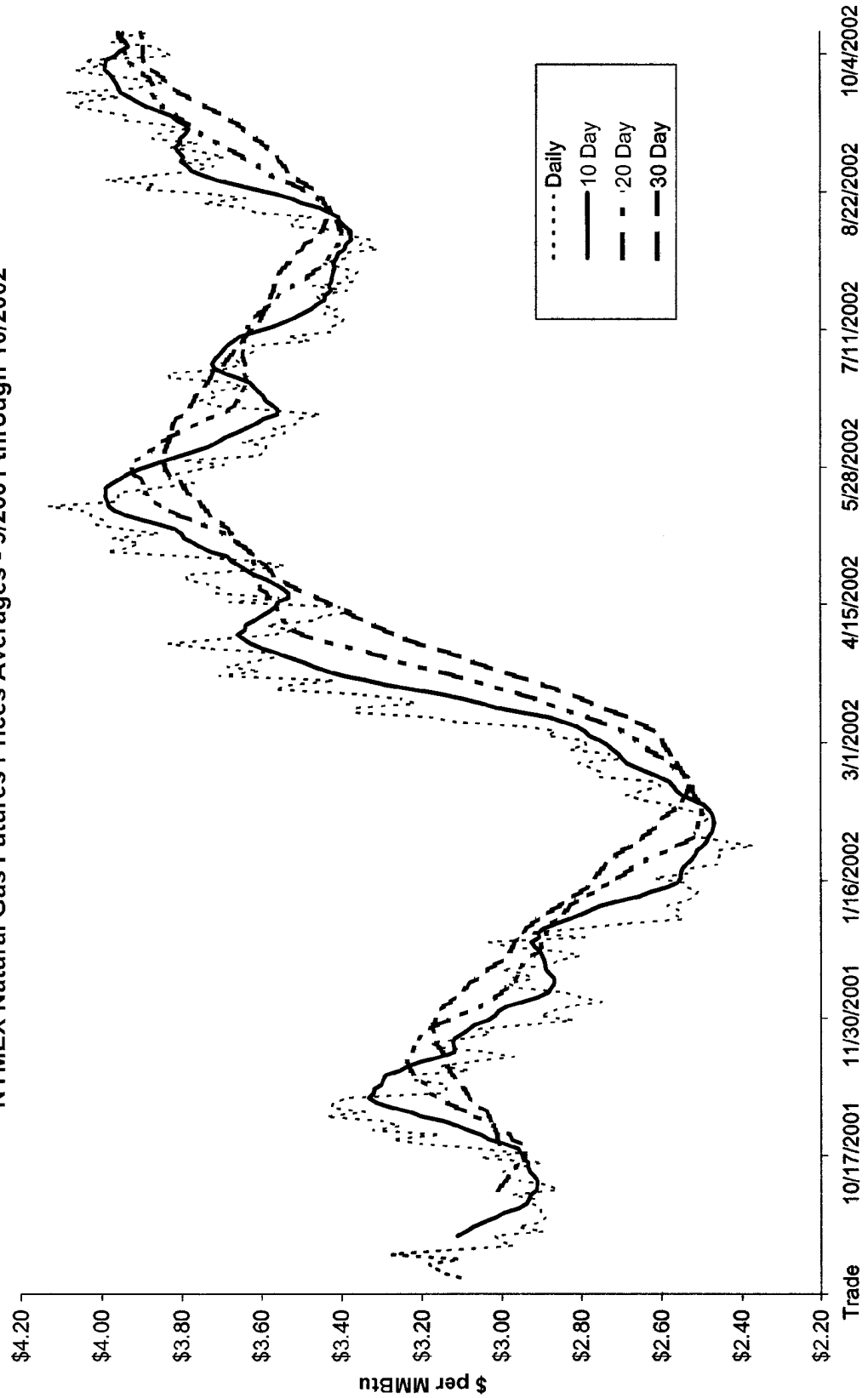

Figure: 30 TAC §115.240(b)

CARB Certified Stage II Vapor Recovery Systems in Effect as of January 1, 2002.

CARB Executive Order Number	Certified System
G-70-25-AA	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System
G-70-33-AB	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System
G-70-36-AD	Modification of Certification of the OPW Balance Phase II Vapor Recovery System
G-70-37-B	Modification of Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service
G-70-38-AB	Recertification of the Texaco Balance Phase II Vapor Recovery System
G-70-48-AA	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System
G-70-49-AA	Recertification of the Union Balance Phase II Vapor Recovery System
G-70-52-AM	Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery System
G-70-53-AA	Recertification of the Chevron Balance Phase II Vapor Recovery System
G-70-70-AC	Certification of the Healy Phase II Vapor Recovery System for Service Stations
G-70-77	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System
G-70-78	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components
G-70-101-B	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11VC and 11VE Vapor Recovery Nozzles
G-70-107	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components
G-70-110	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities
G-70-116-F	ConVault Aboveground Tank Vapor Recovery System
G-70-118-AB	Certification of the Amoco V-1 Vapor Recovery System
G-70-125-AA	Modification of Certification of the Husky Model V Balance Phase II Vapor Recovery Nozzle
G-70-127	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle

G-70-128	Bryant Fuel Cell Aboveground Tank Vapor Recovery System
G-70-130A	Petrovault Aboveground Tank Vapor Recovery System
G-70-131A	Tank Vault Aboveground Tank Vapor Recovery System
G-70-132-A	Supervault Aboveground Tank Vapor Recovery System
G-70-132-B	Supervault Aboveground Tank Vapor Recovery System
G-70-134	Certification of the E-Z Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery Nozzle
G-70-136	FireSafe Aboveground Tank Vapor Recovery System
G-70-137	FuelSafe Aboveground Tank Vapor Recovery System
G-70-138	Phase II Vapor Recovery Systems Installed on Gasoline Bulk Plants/Dispensing Facilities with Aboveground Tanks
G-70-139	Addition to the Certification of the Hirt Model Phase II Vapor Recovery System
G-70-140-A	Integral Phase I and Phase II Aboveground Configurations with the Healy Phase II Vapor Recovery System
G-70-142-B	Phase I Vapor Recovery System for Aboveground Gasoline Storage Tanks
G-70-143	P/T Vault Aboveground Tank Vapor Recovery System
G-70-148-A	Lube Cube Aboveground Tank Vapor Recovery System
G-70-150-AE	Modification to the Certification of the Marconi Commerce Systems, Inc. (MCS) "Formerly Gilbarco" VaporVac Phase II Vapor Recovery System
G-70-152	Moiser BrothersTanks and Manufacturing Aboveground Tank Vapor Recovery System
G-70-153-AD	Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System
G-70-154-AA	Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System
G-70-155	Petroleum Marketing Aboveground Tank Vapor Recovery System
G-70-156	Ecovault Aboveground Tank Vacuum Assist Vapor Recovery System
G-70-157	Ecovault Aboveground Tank Balance Vapor Recovery System
G-70-158-A	Firesafe Aboveground Tank Vapor Recovery System
G-70-159-AB	Modification to the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System

G-70-160	Above Ground Tank Vault Vapor Recovery System
G-70-161	Hoover Containment Systems, Incorporated Aboveground Tank Vapor Recovery System
G-70-162-A	Steel Tank Institute Fireguard Aboveground Tank Vapor Recovery System
G-70-163-AA	Certification of the OPW VaporEZ Phase II Vapor Recovery System
G-70-164-AA	Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System
G-70-165	Healy Vacuum Assist Phase II Vapor Recovery System
G-70-167	EnviroVault Aboveground Tank Vapor Recovery System
G-70-168	Bryant Fuel Systems Phase I Vapor Recovery System
G-70-169-AA	Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System
G-70-170	Certification of the E-Z Flo Rebuilt 5005 and 5015 Nozzles for use with the Balance Phase II Vapor Recovery System
G-70-175	Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System for Aboveground Tank Systems
G-70-177-AA	Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System
G-70-179	Certification of the Catlow ICVN-V1 Vacuum Assist Phase II Vapor Recovery System
G-70-180	Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities
G-70-181	Hirt VCS400-7 Bootless Nozzle Phase II Vapor Recovery System for Aboveground Storage Tank Systems
G-70-183-AA	Relating to Language Correction in Existing Executive Order G-70-183 (Healy/ Franklin System)
G-70-186	Certification of the Healy 400 ORVR Vapor Recovery System
G-70-187	Healy Model 400 ORVR Vapor Recovery System Aboveground Tank Systems
G-70-188	Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System
G-70-190	Guardian Containment, Corporation Armor Cast Aboveground Tank Vapor Recovery System

G-70-191-AA	Relating to Language Correction in Existing Executive Order G-70-191 (Healy 600 ORVR/800)
G-70-192	Certification of the Healy Model 400 ORVR Nozzle for Existing Aboveground Storage Tank Systems
G-70-193	Certification of the Hill-Vac Vapor Recovery System for Cargo Tank Motor Vehicle Fueling Systems
G-70-194	Containment Solutions Hoover Vault Aboveground Vapor Recovery System
G-70-195	Cretex Companies, Inc FuelVault Aboveground Tank Vapor Recovery System
G-70-196	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System
G-70-197	Synchrotek Fastflo 3 Phase II Vapor Recovery System
G-70-200	Oldcastle Aboveground Below-Grade Fuel Vault with Balance Vapor Recovery System and Buried Vapor Return Piping
G-70-201	Oldcastle Aboveground Below-Grade Fuel Vault with Balance Vapor Recovery System and Trenched Vapor Return Piping
G-70-202	Oldcastle Aboveground Below-Grade Fuel Vault with Gilbarco VaporVac Phase II Recovery System and Trenched Vapor Return Piping

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 Department of Agriculture

Request for Proposals - Integrated Pest Management Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, 12.002, and 12.007, the Texas Department of Agriculture (TDA) hereby requests proposals for projects for the period March 1, 2003 through February 29, 2004 that use and expand the use of integrated pest management (IPM) in agriculture. A total amount of up to $300,000 may be awarded. Two categories will be considered: Geographically Specific Implementation Projects and Statewide Projects.

Eligibility. Grant proposals will be accepted from non-profit producer, educational or research organizations involved in IPM programs.

Funding Areas. Funding is limited to the following two categories:

1. **Geographically Specific Project** - Implementation projects should be for the demonstration of IPM principles and technology, the establishment of educational programs to expand the use of biologically intensive IPM, or delivering biologically intensive IPM programs to producer groups in a short period of time. Joint efforts between public and private entities are encouraged. Preference will be given to proposals that:

(a) emphasize the final development and delivery of new technologies;

(b) compare different IPM strategies;

(c) implement new IPM tactics, strategies, or components of IPM systems;

(d) seek implementation of IPM practices in Texas counties and areas where such practices have not been used;

(e) demonstrate economic benefits for Texas; or

(f) implement IPM in non-traditional commodities.

2. **Statewide Projects** - The following areas within this category are eligible. They are as follows:

(a) **Internship Project.** A program to develop and deliver trained, experienced IPM professionals by providing college students in the crop production/protection disciplines the opportunity to earn college credits while gaining expertise and experience in non-profit, producer operated, professionally supervised IPM programs at the county level. An amount up to $40,000 is available for this project.

(b) **Crop Management Manual.** Develop, publish and deliver an integrated crop management manual for a Texas crop, addressing production practices from planting to harvest and prevention, monitoring, and management of major insect, weed, and disease pests. The manual must be practical in nature. An amount up to $25,000 is available for this project.

Proposal Limitations. Geographically specific projects are limited to no more than $15,000 per project. Statewide projects are limited to no more than the following: internship project - $40,000 and crop management manual - $25,000.

Geographically specific grant projects are limited to one year of funding; however, a no-cost extension may be requested if properly justified in writing **no later** than thirty (30) days prior to the termination date of the project. If approved, the extension shall not exceed one year past the original termination date. Other than a potential extension, funds for geographically specific grant projects will not be awarded for multiple funding cycles. Research conducted in previous funding cycles will not be considered for subsequent funding.

Generally, statewide grant projects are limited to one year of funding with the availability of a no-cost extension if properly justified in writing no later than thirty (30) days prior to the project's termination date. However, subsequent year funding may be available if the proposal meets eligible statewide funding areas.

Proposals may not include more than 10% in indirect costs. Proposals may include the use of no more than two (2) chemical treatments for experimental control purposes to validate IPM methods. Those proposals focusing on chemical efficacy testing will not be considered for funding.

Matching Requirements. There are no matching requirements for this grant program.

Eligible Expenses. Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;

2. Travel - domestic only;

3. Equipment - nonexpendable, tangible personal property having a useful life of more than one year and costs $1,000 or more;

4. Supplies and direct operating expenses - equipment that costs less than $1,000, research and office supplies, postage, telecommunications, printing, etc.; and

5. Indirect costs - no more than 10%.

Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information - http://www.governor.state.tx.us/stategrants/UGMS012001.doc. Following are some examples of these ineligible expenses:

1. Alcoholic beverages;

2. Entertainment;

3. Contributions - charitable or political;

4. Expenses falling outside of the contract period;

5. Expenditures not specifically listed in the project budget; and

6. Expenses that are not adequately documented.

Submission Requirements. Each proposal may not exceed six (6) pages and must include the following criteria:

1. Cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead researcher and point of contact.

2. Project summary, not to exceed one page. Include a statement about whether project is statewide or geographically specific. If geographically specific, indicate the impact area by region and county listing.

3. Identification of the key personnel to be involved in the project, including information on their experience.

4. Rationale/justification for the project.

5. Performance objectives.

6. Work plan.

7. Detailed description of the anticipated beneficial impact on agriculture and deliverables.

8. Detailed project budget, including justification for proposed line item expenditures.

Additional Requirements for Statewide Renewal Proposals. In the case of statewide proposals seeking subsequent year funding for the logical expansion of the existing project, an additional page is required and is to be inserted after the coversheet. This page shall constitute a Progress Summary that will succinctly describe progress attained in the prior year of funding, any significant accomplishments and statements clearly explaining the rationale and justification for seeking a subsequent year of funding.

Reporting Requirements. Approved projects are required to submit the following reports:

1. Narrative reports on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the award document.

2. Final compliance narrative report due either upon completion of the project or thirty (30) days after the termination of the contract. The final report shall be submitted in a hard copy format and an electronic format on a diskette utilizing Word. The final report shall contain:

(a) a project summary -history of the project, its objectives, importance, effort, results, and commercial applications of the project;

(b) a description of the successes, challenges, and any limitations of the program;

(c) technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and

(d) a description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.

3. Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

3. Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

4. Upon grant award, TDA shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

5. In any year in which a financial audit is conducted, a copy must be submitted to both TDA, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

6. In accordance with Texas Government Code Ann. 783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees will be provided a copy or it may be downloaded from http://www.governor.state.tx.us/stategrants/UGMS012001.doc.

Deadline and Submission Information. Proposals should be submitted to Ms. Carol Funderburgh, Contracts and Grants Coordinator, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 9th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. January 8, 2003. One original and nine copies must be submitted. Fax copies will not be accepted.

Please contact Ms. Funderburgh at 512/463-8536 or by email at carol.funderburgh@agr.state.tx.us with any questions you may have.

Evaluation and Award Information. All proposals will be subject to evaluation by a committee based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA reserves the right to fund proposals from alternative funding sources if the proposal meets the stipulated requirements of that RFP. TDA is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

The announcement of grant awards will be made no later than February 28, 2003.

TRD-200207383
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 12, 2002

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Texas Building and Procurement Commission

Invitation for Bid (IFB) Notice

TBPC Project No. 01-013C-501

IFB Number: 303-3-10205-A

Project Name: Building 505 Laboratory Repairs and Renovations South Texas Health Care System (STHCS) 1301 Rangerville Road Harlingen, Texas 78551 for the Texas Department of Health

Sealed Bids for this project will be received until **11:00A.M., November 8, 2002, at the Central Services Building, Bid Room No. 180, 1711 San Jacinto, Austin, TX 78701.** See the IFB for delivery options.

Plans and Specifications may be obtained from the A/E: Joshua Engineering Group, Inc., 2161 N. W. Military Highway, Suite 103, San Antonio, Texas 78213, Phone: (210) 340-2322, Fax: (210) 340-1268, for a deposit of $25.00 per set, refundable upon return of a complete, unmarked set(s).

Only bids submitted on the official CONTRACTOR'S PROPOSAL FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Julia DeGlandon (Fax: 512-463-3360),julia.deglandon@tbpc.state.tx.us or through the Electronic State Business Daily at: **http://esbd.tbpc.state.tx.us/1380/bid_display.cfm?session=44420**

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to Julia DeGlandon via fax at (512) 463-3360 or via email at julia.deglandon@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Proposal Form or on the face of the Addendum and returned with the bid.

TRD-200207262
William F. Warnick
General Counsel
Texas Building and Procurement Commission
Filed: November 7, 2002

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of November 1, 2002, through November 7, 2002. The public comment period for these projects will close at 5:00 p.m. on December 13, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Spinnaker Exploration Company; Location: The project is located across a Federal fairway located in High Island Blocks 205, 196, and 197 in Federal waters of the Gulf of Mexico. A pipeline would begin at proposed Well Number 1, located in block 206, and enter the fairway in Block 205. The pipeline would exit the fairway in Block 197 and terminate at the Spinnaker "A" Platform in Block 197. Project Description: The applicant proposes to install 7.86 miles of a 6-inch diameter pipeline from a proposed well, through a Federal fairway, to an existing platform. The length of the fairway crossing would be 2.47 miles. The water depth is approximately 53 feet; therefore, the pipeline would be buried at a required 10.0 feet below the mud line. CCC Project No.: 02-0357-F1; Type of Application: U.S.A.C.E. permit application #22852 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Port Aransas; Location: The project is located along the Corpus Christi Ship Channel (CCSC) approximately 4,000 feet west of the Port Aransas Ferry Landing on the west side of Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Aransas, Texas. Approximate UTM Coordinates: Zone 14; Easting: 688000; Northing: 3080250. Project Description: The applicant proposes to armor an unprotected reach of shoreline approximately 8,500 feet long on the CCSC that consists of sand/shell beach and is undergoing rapid erosion. Armoring would be accomplished by constructing groins and a concrete bulkhead with backfill areas along the reach. The bulkhead would be located immediately landward of the ordinary high tide line and would follow this elevation. It is possible that some areas would be cut and filled in order to maintain a relatively straight bulkhead. The bulkhead would be lined with filter cloth to increase its resistance to washouts. Approximately 500 cubic years of clean sand would be used to backfill behind the bulkhead and above mean high tide. Existing riprap material along the shore would be pulled back behind the proposed bulkhead and used as fill material. CCC Project No.: 02-0361-F1; Type of Application: U.S.A.C.E. permit application #22835 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: Kontiki Beach Council of Co-Owners; Location: The project is located at 2290 Fulton Beach Road, Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Rockport, Texas. Approximate UTM Coordinates: Zone 14; Easting: 693000; Northing: 3109500. Project Description: The applicant proposes to extend two breakwaters approximately 550 feet. The breakwaters would be constructed from the south side of the channel and consist of 12 feet to 20 feet of Shoreguard 550 metal sheets and 10" pilings. The applicant would extend the existing channel 180 feet by mechanically removing 280 cubic yards of sand. The material would be mechanically loaded into barges and hauled to the existing upland disposal site and mechanically offloaded. The applicant also proposes to extend an existing pier approximately 200 feet. The pier would be constructed from the south side of the channel and similar to the existing pier. The extension would be 5 feet wide and approximately 200 feet long. CCC Project No.: 02-0362-F1; Type of Application: U.S.A.C.E. permit application #16517(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Port Lavaca Port Commission; Location: The project is located at the Nautical Landings Marina at 106 Commerce Street in Port Lavaca, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Lavaca, Texas. Approximate UTM Coordinates: Zone 14; Easting: 732700; Northing: 3157700. Project Description: The applicant proposes to maintenance dredge the Nautical Landings Marina for a period of 10 years. The area would be hydraulically dredged to a depth of -8 feet mean low tide with approximately 15,000 to 20,000 cubic yards of material to be removed every five years. The material would be placed on the U.S. Army Corps of Engineers Dredged Material Placement Area Number 23, located to the north of the Port Lavaca Channel. CCC Project No.: 02-0363-F1; Type of Application: U.S.A.C.E. permit application #22831 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this

project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Davis Petroleum Company; Location: The project is located in State Tracts 283, 284, 285, and 309 within Corpus Christi Bay in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Estes, Texas. Approximate UTM Coordinates: Zone 14; Easting: 687242; Northing: 3087241. Project Description: The applicant proposes to drill a well in State Tract 285 utilizing a 240-foot-long by 100-foot-wide drilling pad of shell, gravel, or crushed rock. The project would include the installation of a typical marine barge and keyway, a production platform with attendant facilities, and flowlines between the well and production platforms. In addition, the applicant proposes to install an 8-inch-diameter pipeline from the proposed well to a point on Stedman Island. This proposed pipeline would be located approximately 30 feet west of, and parallel to, an existing Cabot Oil and Gas pipeline. The pipeline would be installed by either jetting and/or trenching except for the portion that would cross the Aransas Channel and State Highway 361. This portion of the pipeline would be installed by directional drilling. The applicant would use turbidity curtains to control silt/solids re-suspended during the drilling of the well and the installation of the pipeline. CCC Project No.: 02-0364-F1; Type of Application: U.S.A.C.E. permit application #22863 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act. Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200207385
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: November 13, 2002

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Comptroller of Public Accounts

Notice of Withdrawal

Notice of Withdrawal of Request for Proposals: Pursuant to Chapter 403, Sections 403.011, 403.105, 403.1055, 403.106, 403.1065, 403.1066, 403.1068, 403.1041; and Chapter 404, Sections 404.024, 404.103, 404.104, 404.106, 404.114; and Chapters 2155 and 2156, Sections 2155.001, and 2156.121, Texas Government Code; and Chapters 62 and 63, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (TTSTC), announces its withdrawal of Request for Proposals (RFP #144c) for the purpose of obtaining Hedge Fund, Fund-of-Funds Investment Management Services for the State's Tobacco Settlement Permanent Trust Fund, Permanent Higher Education Fund, Public Health Fund, and Trusts (the Funds). The TTSTC hereby withdraws the RFP.

The current RFP was issued on July 19, 2002, and published in the *Texas Register*, (27 TexReg 6565) (RFP #144c).

TRD-200207386
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 13, 2002

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Notice of Withdrawal

Notice of Withdrawal of Request for Proposals: Pursuant to Chapter 403, Sections 403.011, 403.105, 403.1055, 403.106, 403.1065, 403.1066, 403.1068, 403.1041; and Chapter 404, Sections 404.024, 404.103, 404.104, 404.106, 404.114; and Chapters 2155 and 2156, Sections 2155.001, and 2156.121, Texas Government Code; and Chapters 62 and 63, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (TTSTC), announces its withdrawal of Request for Proposals (RFP #144d) for the purpose of obtaining Private Equity, Fund-of-Funds Investment Management Services for the State's Tobacco Settlement Permanent Trust Fund, Permanent Higher Education Fund, Public Health Fund, and Trusts (the Funds). The TTSTC hereby withdraws the RFP.

The RFP was issued on July 19, 2002, and published in the *Texas Register*, (27 TexReg 6566) (RFP #144d).

TRD-200207387
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 13, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/18/02 -- 11/24/02 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 11/18/02 -- 11/24/02 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-200207384
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 13, 2002

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Texas Education Agency

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-03-003 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant conference. Required applicant conferences are scheduled for Friday, December 13, 2002; Monday, January 6, 2003; and Monday, January 13, 2003, from 9:00 a.m. to 1:00 p.m. in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to criminal offenses, requirements relating to the Public Education Information Management System (PEIMS), criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Applicants should plan for a starting date of no earlier than fall 2004. Charters are awarded for periods to be determined by the State Board of Education (SBOE), subject to annual reviews.

Project Amount. The TEC, §12.106(a), states that a charter holder is entitled to receive funding under TEC, Chapter 42, for the open-enrollment charter school as if the school were a school district without a tier one local share for purposes of TEC, §42.253, and without any local revenue for purposes of TEC, §42.302. In determining funding for an open-enrollment charter school, adjustments under TEC, §§42.102-42.105, and the district enrichment tax rate (DTR) under TEC, §42.302, are based on the average adjustment and average DTR for the state. The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend, although the charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA. The SBOE reserves the right to approve or deny any application. Neither the TEA nor the SBOE is liable for any costs incurred in the preparation or submission of an application.

The SBOE may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently 201 SBOE-approved charters. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication "Open-Enrollment Charter Guidelines and Application" (RFA #701-03-003), which includes an application and procedures, may be obtained by writing the: Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, by calling (512) 463-9575, or at http://www.tea.state.tx.us./charter/rfa.htm.

Deadline for Receipt of Applications. The completed application must be received in the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, by 5:00 p.m.(central time), Thursday, March 27, 2003, to be considered.

Further Information. For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, TEA, by telephone at (512) 463-9575 or by e-mail at mperry@tea.state.tx.us.

TRD-200207400
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: November 13, 2002

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the

staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 23, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Daniel C. Loper dba Rio Leche Dairy #1 and dba Rio Leche Diary #2; DOCKET NUMBER: 2001-0353-AGR-E; TCEQ ID NUMBERS: 01699-000 and WQ0003089-000; LOCATION: south side of County Road (CR) 339 at its intersection with CR 340 at 1429 CR 339, and on the north side of Apple Orchard Road, approximately three miles west of the intersection of State Highway 6 and US Highway 377, Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.39(f)(28)(G), by failing to stop waste application on a field where phosphorous levels exceeded 200 parts per million; 30 TAC §321.39(f)(19)(J), and TCEQ Permit Number 01699, Special Provision 2.6; by failing to maintain records which included all waste applications; TCEQ Permit Number 01699, Special Provision 2.6.2.4, by failing to maintain in the facilities' records, a copy of the contract with the hauler that removes the solid waste; 30 TAC §321.39(f)(24)(B), TWC, §26.121, and TCEQ Permit Number 01699, Special Provision 4.2, by failing to contain the runoff from the manure pile at the calf pens; 30 TAC §321.39(f)(16), and TCEQ Permit Number 01699, Special Provision VI 1.2, by failing to provide an adequate liner certification for waste storage pond #2; 30 TAC §321.40(1), and TWC, §26.121, by failing to contain the contaminated runoff from the dry cow and close-up cow confinement areas; 30 TAC §305.125(1) and (5), §321.31(a), and TWC, §26.121(a)(1), and TCEQ TPDES Permit Number 0003089-000, Special Provision VI 2.2.1, by failing to prevent the discharge of contaminated runoff from the irrigation fields into waters in the state; 30 TAC §305.125(1) and §321.42, and TCEQ TPDES Permit Number 0003089-000, Standard Provision VII 2, by failing to properly notify the TCEQ both verbally and in writing of an unauthorized discharge and submit the required monitoring documentation within the required time frames, 30 TAC §305.125(1) and (5) and §321.39(f)(28)(G), by failing to stop waste application on a field where phosphorous levels exceeded 200 part per million; PENALTY: $20,000; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Mark Locke dba Dayton Creek Water System; DOCKET NUMBER: 2000- 0805-PWS-E; TCEQ ID NUMBER: 1460141; LOCATION: near the intersection of CR 676 and State Highway 321 north of Dayton and Liberty, Liberty County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.120(e)(2), by failing to conduct reduced monitoring tap sampling for lead/copper; PENALTY: $313; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Mark Locke, individually and Champion Water Services, Inc.; DOCKET NUMBER: 2000-0970-PWS-E; TCEQ ID NUMBER: 1460102; LOCATION: CR 6031 east of the intersection of CR 6031 and CR 603, approximately two miles north of Highway 90, Dayton, Liberty County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(e)(2), 290.46(d), and 290.46(d)(2)(A), by failing to provide mechanical chlorination to ensure continuous disinfection of all water and to maintain a free chlorine residual in the distribution systems; 30 TAC §290.44(d) and §290.46(r), by failing to maintain pressure of 35 pounds per square inch; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence to protect the pressure tank; 30 TAC §290.41(c)(3)(O), by failing to keep the well house locked to exclude possible contamination or damage to facilities by trespassers; 30 TAC §290.41(c)(3)(P), by failing to provide an all weather road to the well site; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; 30 TAC §290.46(v), by failing to install all water system electrical wiring in securely mounted conduit; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the well discharge line prior to any treatment; 30 TAC §290.46(t), by failing to post a community water system sign; 30 TAC §290.46(m), by failing to properly maintain the facility by not cutting the grass surrounding the well site; PENALTY: $2,688; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

TRD-200207350
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 12, 2002

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 23, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules

within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 23, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Marathon Ashland Petroleum, LLC; DOCKET NUMBER: 2001-0575-AIR-E; TCEQ ID NUMBER: GB-0055-R; LOCATION: 1320 Loop 197 South, Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.4 and §115.142, and Texas Health and Safety Code, §382.085(a) and (b), by emitting one or more air contaminants in such concentration and of such duration as are, or may tend to be, injurious to human health or welfare; PENALTY: $75,000; STAFF ATTORNEY: Lisa Dyar, Litigation Division, MC 175, (512) 239-5692; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200207349
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 12, 2002

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Notice of Public Hearing

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning revisions to the Limited Maintenance Plan for the Victoria County ozone attainment area under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans.

This proposed maintenance plan revision covers the second ten-year period of the Victoria County ozone maintenance plan and updates the emissions inventory and monitoring data. This proposed revision also reformats the maintenance plan into the current style used by the commission.

A public hearing on this proposal will be held in Victoria on January 7, 2003 at 7:00 p.m. at the First Victoria National Bank, located at 101 South Main, Victoria, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711- 3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2002-047-SIP-AI, and must be received by 5:00 p.m., January 10, 2003. For further information, please contact Kelly Keel, Strategic Assessment Division at (512) 239-3607, or Alan Henderson, Policy and Regulations Division at (512) 239-1510. Copies of the maintenance plan revision may be obtained from the commission's web site at *www.tceq.state.tx.us/oprd/sips/cover.html*, or by calling Ms. Slupe at (512) 239-4712.

TRD-200207293
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 7, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 20

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive testimony concerning the proposed amendments in 30 TAC Chapter 20, Rulemaking, §20.9, Submission of Documents; and §20.15, Petition for Adoption of Rules; and the repeal of §20.19, Working Groups.

As a result of a quadrennial review, §20.9 would be reworded to clarify the deadline for the submission of documents to the executive director. Section 20.15 would include an update of the agency's name. Section 20.19 would repeal rule language that is more appropriately addressed in Chapter 5, Advisory Groups.

A public hearing on this proposal will be held in Austin on December 17, 2002 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex, Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-060-020-AD. Comments must be received by 5:00 p.m., December 23, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200207292
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 7, 2002

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activity Report due February 12, 2001

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Deadline: Lobby Activities Report due March 12, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Deadline: Lobby Activities Report due April 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Deadline: Lobby Activities Report due May 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Deadline: Lobby Activities Report due June 11, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due July 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due August 10, 2001

Ernest Stromberger, Independent Insurance Agents of Texas, 1115 San Jacinto, Suite 100, Austin, Texas 78701

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Deadline: Lobby Activities Report due September 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Deadline: Lobby Activities Report due October 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Activities Report due November 13, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Deadline: Lobby Activities Report due December 10, 2001

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Deadline: Lobby Activities Report due January 10, 2002

Martha D. DeGroat, Southwestern Bell Telephone Co., 500 Texas #313, El Paso, Texas 79901

Rell B. Rice, 2809 Greenlawn Parkway, Austin, Texas 78757

Hector Uribe, 1005 Congress Ave., #550, Austin, Texas 78701

Darryl S. Johnson, 1781 Spyglass Dr., #351, Austin, Texas 78746

C. Allen Ray, 5701 Misty Hill Cove, Suite 100, Austin, Texas 78759

Paul Schelstrate, P.O. Box 1217, Le Feria, Texas 78559

Lawrence R. Jacobi Jr., 7701 N. Lamar Blvd., #300, Austin, Texas 78752

Michael Kelly, 4806 Timberline Dr., Austin, Texas 78746

Roland Leal, 431 Logan Ranch Rd., Georgetown, Texas 78628

Jeffrey C. Kloster, 600 Congress, #2700, Austin, Texas 78701

Kelly S. Rodgers, 98 San Jacinto Blvd, Ste 900, Austin, Texas 78701

Peggy Venable, 1005 Congress Ave., #910, Austin, Texas 78701

Kelley Jones, Centene Corp. of Texas, 7711 Carondelet, Ste 800, St. Louis Missouri 63105

Cathy S. Golden, Golden Consulting, 1201 Elm Street, Ste 2000, Dallas, Texas 75270

J. William Lauderback, 609 Castle Ridge Rd., Ste 222, Austin, Texas 78746

Glenn Gadbois, P.O. Box 10472, Austin, Texas 78756

Paul C. Walter, 1445 Ross Avenue, #3200, Dallas, Texas 75202

Jane B. Metzinger, 7319 Platas, Dallas, Texas 75227

Charles B. Wilkison, 400 West 14th Street, #200, Austin, Texas 78701

James B. Shelley, 175 E. Houston, Ste 1254, San Antonio, Texas 78205

Pamela Crawford, 20 Greenway Plaza, #500, Houston, Texas 77046

Charles R. Schotz, 6300 Nicklaus Place, Austin, Texas 78746

Mark D. Roberson, American Electric Power, Box 660164, Dallas, Texas 75266-0164

Dewayne D. Naumann, P.O. Box 143092, Austin, Texas 78714-3092

Peter Loge, 50 F. Street, N.W., Ste 1070, Washington, D.C. 20001

Johnny R. Neal II, 1204 San Antonio, Austin, Texas 78701

Kim Allyson Kirchoff, 1204 San Antonio St., Austin, Texas 78701

Laura A. Reed, 4505 Avenue C., Austin, Texas 78751

Kimberly D. Cooper, 1005 Congress Ave., Ste 480, Austin, Texas 78701

Jesse R. Ayala, 41 W. 64th St., Apt 3B, New York, New York 10023

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Marvin W. Kelley, Concentrx LLC, 15455 North Dallas Pkwy, Addison, Texas 75001

Robert Riggs, 823 Congress Ave., Ste 900, Austin, Texas 78701

Anthony Haley, 3408 Enfield Rd, Ste. A, Austin, Texas 78703

David Terrazos, 2409 Glen Springs Way, Austin, Texas 78741

Joseph Ptak, 505 Patricia, San Marcos, Texas 78666

TRD-200207342
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: November 8, 2002

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that David Dewhurst, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by Robert L. Pounds, conducted July 12, 2002, locating the following shoreline boundary:

Survey of a portion of Galveston Bay adjacent to the Johnson Hunter Survey, in Harris County, Abstract No. 35, known as Sylvan Beach in La Porte, Galveston Bay.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director of the Survey Division, Texas General Land Office by phone at 512-463-5212, email ben.thomson@glo.state.tx.us, or fax 512-463-5098.

TRD-200207241
Larry Soward
Chief Clerk
General Land Office
Filed: November 6, 2002

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Texas Department of Health

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on David Swisher, dba DS Services

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to David Swisher, doing business as DS Services (registrant-R22406) of Tomball. A total penalty of $10,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

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-200207398
Susan Steeg
General Counsel
Texas Department of Health
Filed: November 13, 2002

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Texas Department of Housing and Community Affairs

Request for Proposals

The Texas Department of Housing and Community Affairs announces a Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education, and to certify participants as homebuyer education providers.

I. Introduction

Section 2306.253, Government Code, charges the Texas Department of Housing and Community Affairs (TDHCA or the Department) with the development and implementation of a statewide homebuyer education program, designed to provide information and counseling to prospective homebuyers about the home buying process. The Texas Statewide Homebuyer Education Program (TSHEP) was created to fulfill this mandate.

TSHEP aims to bring comprehensive homebuyer education to all 254 Texas counties without duplicating the efforts of existing successful homebuyer education programs. TDHCA is committed to increasing homeownership across the State of Texas through homebuyer education. Expanding the availability of homebuyer education and providing access to counseling to all Texans not only benefits the new homeowner, but also greatly improves the sustainability of communities.

TSHEP proposes training local nonprofit organizations to initiate coverage in underserved areas of the state. To ensure uniform quality of homebuyer education is provided throughout the state, TSHEP will sponsor four (4) separate "Train the Trainer" workshops. The purpose of the training will be to teach local organizations the principles and

applications of comprehensive pre and post purchase homebuyer education, and to certify participants as TSHEP providers.

II. Request for Proposals

The Texas Department of Housing and Community Affairs is seeking proposals to provide training to nonprofit organizations throughout the State of Texas. Such nonprofit organizations may include Texas Agricultural Extension Agents, units of local governments, faith-based organizations, Community Housing Development Organizations (CHDOs), Community Development Corporations (CDCs), Community Based Organizations (CBOs), and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre and post purchase homebuyer education, and to certify participants as providers. TDHCA will contract four (4) separate five-day training classes with a maximum of 35 participants per class. The classes will be conducted between February 1, 2003 and August 31, 2003. TDHCA will review and select the participants. The four training locations will be determined by TDHCA and will be held in geographically diverse areas of the state. Training topics should include, but are not limited to the following:

pre and post-purchase counseling (including information related to home equity loans and reverse mortgages)

delinquency and default counseling

delinquency intervention

how to access affordable housing single family mortgage products

how to reach traditionally underserved populations (including lower income persons/households, persons with disabilities, and persons living in colonias)

ethics issues for counselors

track development (e.g. fast, regular)

predatory and subprime lending

fair housing and lending laws

effective training methods

basic financial literacy

As there will be a wide range of experience among the participants, the successful applicant will need to demonstrate the ability to tailor each class to their individual needs. Specifically the applicant should show that they have the capacity and experience providing basic, intermediate, and advanced courses on homebuyer education training in both English and Spanish. In addition, proposals should itemize the cost of the individual training class.

The successful applicant will be responsible for coordinating the logistics of the training with respect to their training personnel (hotel and travel arrangements), providing course materials, and providing for any audio/visual needs. These items should be taken into account when preparing a budget. The successful applicant will also be responsible for administering a Homebuyer Education Trainer Certification exam at the end of each training session. A report of the participants' results must be submitted to TDHCA within thirty (30) days of the completion of each training session.

The payment for the successful applicant will be on a reimbursement basis and payment may be made within sixty (60) days of the completion of each training session performed in accordance with the contract or a one-time payment upon the conclusion of the training series.

III. Response Time Frame and Other Information

Reponses should be delivered in the following manner:

Original and two (2) copies to:

Texas Department of Housing and Community Affairs

Attention: JoAnn DePenning, Manager, Texas Statewide Homebuyer Education Program.

(by courier)

507 Sabine, Suite 800

Austin, TX 78701

or

(by mail)

P.O. Box 13941

Austin, TX 78711-3941

Proposals must be received by TDHCA no later than 5:00 p.m. on January 6, 2003.

Faxed or e-mailed applications will not be accepted.

Questions concerning this Request for Proposals may be directed in writing to TDHCA, Attention: JoAnn DePenning, Manager, Texas Statewide Homebuyer Education Program, or by electronic mail to jdepenni@tdhca.state.tx.us

IV. Proposal Content

A maximum of 100 points can be awarded to proposals submitted to TDHCA within the parameters of this Request for Proposals. Points will be awarded according to the content of each proposal as itemized below:

Item A: Experience, 50 points

Experience will be evaluated in two categories as follows:

Category 1) Past Experience of your organization (25 points)

Provide reference of past training services provided by your organization in both English and Spanish. (please provide a list)

Submit a narrative or resume style description of the training services your organization has provided on training homebuyer education providers over the past three years, in both English and Spanish. This description should not exceed two typewritten pages in length.

Category 2) Personnel Information Requirement (25 points)

Provide the names, titles, brief resumes or statements of experience, and office location of the persons to be assigned to any of the responsibility concerning this Request for Proposals. Also indicate the duties assigned to each individual in previous homebuyer counseling endeavors as listed under Category 1.

It is the policy of TDHCA to encourage the participation of minorities and women in all facets of the Department's activities. The extent to which minorities and women participate in the ownership, management and professional work force of a firm will be considered by TDHCA Management in the selection of a training organization. Applicants are therefore requested to submit a current minority profile of their organization in terms of ownership and management, as well as by professional, administrative, and clerical and support personnel.

Item B: Description of Services to be Rendered to TDHCA, 50 points

Please summarize the services your organization will provide to participants of your training seminars. You should address the content, delivery, and format of the homebuyer education training you intend

to provide. This description should not exceed three (3) typewritten pages in length. Please include any pamphlets and training materials as an attachment.

Item C: Budget

Please provide an itemized budget outlining all costs to be covered by TDHCA funds in response to this Request for Proposals (e.g. travel, materials, salaries, and A/V equipment). Itemize the cost of the individual training classes.

Item D: Financial Condition

Please provide a copy of your organization's most recent annual unaudited financial statement (this should be included as an attachment).

V. Scope of Services

It shall be within the sole discretion of TDHCA to renew or extend the contract at the end of the contract period. TDHCA reserves the right to issue a Request for Proposals for training services at any such time after the expiration of the term of the contract for services.

VI. Administrative Information

Item A: General Information

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this Request for Proposals is intended to serve only as a general description of the services sought by TDHCA. In releasing this Request for Proposals, TDHCA is not obligated to proceed with any action, and may decide it is in the agency's best interest to discontinue consideration of services. TDHCA reserves the right, with thirty days written notice, to cancel any contract awarded under the terms of this Request for Proposals. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Item B: Public Information Act

Information submitted to TDHCA is public information and is available upon request after the Board has approved the selection of organizations in accordance with the Texas Public Information Act, Chapter 552 of the Government Code (the "Act"). An organization submitting any information it considers confidential as to trade secrets of commercial or financial information which it desires not to be disclosed must clearly identify all such information in its proposal. If information so identified by an organization is requested from TDHCA, the organization will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination as to whether such information is expected from disclosure under the Act. Information not clearly identified as confidential will be deemed to be non-confidential and will be made available by TDHCA upon request.

Item C: Costs Incurred in Responding

All costs directly or indirectly related to the preparation of a response to this Request for Proposals or any oral presentation required to supplement and/or clarify the proposal which may be required by TDHCA shall be the sole responsibility of, and shall be borne by, your organization.

TRD-200207401
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 13, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of SIERRA INSURANCE COMPANY OF TEXAS to SIERRA INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application to change the name of ACE GUARANTY RE INC. to ACE GUARANTY CORP., a foreign fire and/or casualty company. The home office is in Baltimore, Maryland.

Application for admission to the State of Texas by THE GSA EMPLOYERS WELFARE TRUST FUND, 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 CUSTOM RAIL EMPLOYER WELFARE TRUST FUND, a foreign Multiple Employer Welfare Arrangement (MEWA). The home office is in Washington, D.C.

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-200207407
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 13, 2002

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Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations. Sec. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

(1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: ...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, other labor income, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2001. The largest component of Texas personal income is wage and salary disbursements, estimated at $355.1 billion during calendar 2001. Salary and wage disbursements are added with other labor income -- primarily employer contributions to private pensions and welfare funds -- and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated $475.0 billion in calendar year 2001.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions -- principally social security payroll taxes paid by employees and self-employed -- are deducted. A place-of- residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be $609.5 billion for calendar year 2001.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past fourteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources: (1) University of North Texas Center for Economic Development & Research, (2) Global Insight (formerly DRI-WEFA), (3) Economy.com (formerly Regional Financial Associates), (4) Texas Comptroller of Public Accounts, and (5) Perryman Group. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include more detailed discussion of the forecasting methods used. See the following issues of the *Texas Register* : 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, 23 TexReg 11472, and 25 TexReg 11735.

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2004-05 biennium over the 2002-03 biennium. These forecasts range from 1.0786 or 7.86 percent to 1.1309 or 13.09 percent.

Table 4 outlines briefly the sources and dates for the Texas personal income growth rates presented in Table 3.

The personal income growth rates shown in Table 3 or any more recent forecasts will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one or any combination of the growth rates shown in adopting a Texas personal income growth rate for the 2004-05 biennium.

Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2002-03 Biennium

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2002-03 biennium--the base biennium--is the second item of information to be determined by the Legislative Budget Board. As of November 13, 2002 the staff estimates this amount to be $49,171,222,525. This item multiplied by the estimated rate of growth of Texas personal income from the 2002-03 biennium to the 2004-05 biennium produces the limitation on appropriations for the 2004-05 biennium under Article VIII, Section 22, of the Texas Constitution.

Calculating the 2004-05 Limitation

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2004-05 biennium may be illustrated by selecting a growth rate and applying it to the 2002-03 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth rate is adopted, current estimates suggest a limitation on 2004-05 biennial appropriations from non-dedicated state taxes ranging from $53.0 billion to $55.6 billion.

Method of Calculating the 2002-03 Appropriations from State Tax Revenue Not Dedicated by the Constitution

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2002-03 biennium--the base biennium--is the second item of information to be determined by the Legislative Budget Board. As of November 13, 2002, the staff estimates this item to be $49,171,222,525. This section details the sources of information used in this calculation.

Total appropriations for the 2002-03 biennium include those in the General Appropriations Act, Senate Bill No. 1 (S.B. 1), Seventy-seventh Legislature, plus any additional appropriations made in legislation passed by the Seventy-seventh Legislature for the 2002-03 biennium. Any subsequent appropriations made by the Seventy-eight Legislature for the 2002-03 biennium would also be included in total appropriations.

Section I of Table 6, shows for general revenue related funds the total amount of appropriations, the amount financed from constitutionally dedicated tax revenue, from non- tax revenue and the remainder--the amount financed from tax revenue not dedicated by the Constitution--which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund. The Game, Fish and Water Safety Account and the Research and Oversight Council on Workers' Compensation Account also receive tax revenue not dedicated by the Constitution, which is also included in the calculation of the limitation.

I. General Revenue Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations and (2) all other line item appropriations.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated-to-be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2002 amounts are based on actual 2002 expenditures. Amounts for fiscal year 2003 are taken from S.B. 1, Seventy-seventh Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations ." General revenue related appropriations in Table 7 are from the Fiscal Size Up, 2002-03 Biennium, adjusted for Premium Credits, Vendor Drug Rebates, Medicaid Subrogation Receipts, and Premium Co-Payments (CHIP) that are no longer considered general revenue. The Fiscal Size Up was published by the Legislative Budget Board after the Seventy-seventh Legislative Session to summarize information contained in the General Appropriations Act. Appropriation amounts in the Fiscal Size Up are amounts from S.B. 1, Seventy-seventh Legislature, adjusted to reflect the Governor's vetoes, plus additional appropriations made by the Seventy-seventh Legislature for the 2002-03 biennium.

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the $61,323,578,942 of general revenue related fund appropriations, $49,124,040,086 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution. By subtracting the appropriations financed from the known sources listed in items one through 12 from the total of $61,323,578,942 it can be established that appropriations totaling $54,021,816,108 remain to be financed. (See item 13 in Table 6, Part B.)

Dedicated state tax revenues deposited into general revenue related funds are estimated to total $2,168,148,979 during the 2002-03 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at $10,031,389,877 for the 2002-03 biennium. (See third column of Table 6, Part B.)

General revenue related fund appropriations to be financed from non-dedicated tax revenue are shown in column four of Table 6, Part B. This amount totals $49,124,040,086 for the 2002-03 biennium.

II. Insurance Company Maintenance Taxes

The Research and Oversight Council on Workers' Compensation Account receives taxes paid by insurance companies to help pay the administrative costs of the Council. The amount shown as an appropriation from non-dedicated state tax revenues is based on actual 2002 revenues and estimated 2003 maintenance tax collections.

III. Boat and Boat Motor Sales and Use Tax

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining 5 percent is deposited into the Game, Fish and Water Safety Account. The portion of this tax which is deposited into the Game, Fish and Water Safety Account is included as an appropriation from tax revenue not dedicated by the Constitution. This amount is based on actual 2002 revenues and estimated 2003 boat and boat motor sales and use tax collections.

IV. Other Taxes Outside of General Revenue-Related Funds

The state imposes a sales tax and a motor vehicles sales tax pursuant to S.B. 5 of the Seventy-seventh Legislative Session that is deposited into the Emissions Reduction Plan Account. The state also imposes taxes on the sale of fireworks that is deposited into the Rural Volunteer Fire Department Account. The revenue from these accounts is included as appropriations from tax revenue not dedicated by the Constitution. This amount is based on actual 2002 revenues and estimated 2003 tax collections.

Grand Total

A grand total of $61,370,761,381 in 2002-03 biennial appropriations is included in this analysis. Of this amount, $2,168,148,979 is financed out of taxes dedicated by the State Constitution. Another $10,031,389,877 is financed out of non-tax revenue. The remaining $49,171,222,525 is financed out of tax revenue not dedicated by the State Constitution. This amount serves as a base for calculating the limitation on 2004-05 biennial appropriations from non-dedicated state taxes, as required by Art. VIII, Section 22, of the Texas Constitution.

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2001
In Millions of Current Dollars

Earnings by Place of Work		**Amount**	**Percent of Total**
Wage and Salary Disbursements		$355,124	74.8%
Other Labor Income		39,574	8.3
Proprietors' Income			
Farm	$1,796		
Nonfarm	78,469		
Subtotal		80,265	16.9
Total Earnings by Place of Work		$474,963	100.0%
Derivation of Total Personal Income			
Earnings by Place of Work (from above)		$474,963	
Less: Personal Contribution for Social Insurance	$26,692		
Plus: Adjustment for Residence	(1,097)		
Equals: Net Earnings by Place of Residence		$447,174	73.4%
Plus: Dividends, Interest and Rent		91,553	15.0
Plus: Transfer Payments		70,763	11.6
Total Personal Income		$609,489	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Annual Personal Income By Major Source and Earnings by Industry*, October 2002.

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1974-75 TO 2000-01 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1972-73	1974-75	1.290	29.0%
1974-75	1976-77	1.282	28.2
1976-77	1978-79	1.315	31.5
1978-79	1980-81	1.348	34.8
1980-81	1982-83	1.239	23.9
1982-83	1984-85	1.177	17.7
1984-85	1986-87	1.083	8.3
1986-87	1988-89	1.102	10.2
1988-89	1990-91	1.156	15.6
1990-91	1992-93	1.136	13.6
1992-93	1994-95	1.124	12.4
1994-95	1996-97	1.145	14.5
1996-97	1998-99	1.175	17.5
1998-99	2000-01	1.144	14.4

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FOUR ECONOMETRIC MODELS
2002-03 BIENNIUM TO 2004-05 BIENNIUM

Source of Forecast	2004-05 Texas Personal Income Growth Rate
1. University of North Texas Center for Economic Development & Research	1.0786
2. Global Insight (formerly DRI•WEFA)	1.0990
3. Economy.com (formerly Regional Financial Associates)	1.1177
4. Texas Comptroller of Public Accounts	1.1183
5. Perryman Group	1.1309

Note: The growth rates shown above can be interpreted in percentage terms. For example, the growth rate of 1.0990 for the Global Insight forecast of Texas personal income indicates estimated personal income growth of 9.90 percent for the 2004-05 biennium.

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2004-05 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. University of North Texas Center for Economic Development & Research	Econometric	Obtained October 2002
2. Global Insight (formerly DRI•WEFA)	Econometric	Fall 2002
3. Economy.com (formerly Regional Financial Associates)	Econometric	Fall 2002
4. Texas Comptroller of Public Accounts	Econometric	Fall 2002
5. Perryman Group	Econometric	Obtained October 2002

Source: Compiled by the Legislative Budget Board, October 2002.

TABLE 5
TWO ILLUSTRATIONS OF A POSSIBLE
LIMIT ON 2004-05 BIENNIUM APPROPRIATIONS
OF STATE TAX REVENUE NOT DEDICATED BY
THE TEXAS CONSTITUTION
In Millions of Dollars

1. 2002-03 Base	$ 49,171.2	$ 49,171.2
2. Illustrative Growth Rates	X 1.0786	X 1.1309
3. 2004-05 Limitation on Growth in Appropriations	$ 53,035.3	$ 55,609.5

TABLE 6
2002-03 BIENNIAL APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE

				2002 – 03 Appropriations
I.	General Revenue Related Funds			
	A.	Appropriations		
		1. "Estimated to Be" Line Item Appropriations		
		(a) Voter Registration	$ 643,653	
		(b) Mixed Beverage Reimbursement	157,434,753	
		(c) County Taxes on University Lands	2,494,040	
		(d) Treasury Unclaimed Money Fund Receipts	108,313,495	
		(e) Ranger Pensions	12,560	
		(f) Comptroller: Social Security / Benefit Replacement Pay	862,235,405	
		(g) Employees Retirement System	1,433,496,408	
		(h) Department of Health: Tertiary Care Facilities from Unclaimed Lottery	65,426,590	
		(i) School for the Blind: Educational Professional Salary Increases	405,051	
		(j) School for the Deaf: Educational Professional Salary Increases	501,484	
		(k) Teacher Retirement System	2,486,032,015	
		(l) Teacher Retirement System: Group Health Insurance Program	654,550,615	
		(m) Teacher Retirement System: Optional Retirement Program	192,885,667	
		(n) Comptroller's Judicial Section	95,193,073	
		(o) Hotel-Motel Tax to Department of Economic Development	39,481,423	
		(p) Texas Lottery Commission: Allocation to Local Government from the Bingo Tax	18,362,530	
		(q) Board of Professional Land Surveying: National Exam	16,175	
		(r) Board of Examiners of Psychologists: National Exam	163,025	
		(s) Salary Increase for Employees of State Agencies	176,018,283	
		(t) Adjustment for Texas Education Agency Attendance Credit Revenue	(41,207,801)	
		Subtotal, "Estimated to Be"		$ 6,252,458,443
		2. All Other Line Items		55,071,120,498
TOTAL (General Revenue Related Fund Appropriations)				$61,323,578,942

TABLE 6
2002-03 BIENNIAL APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE
(continued)

		Total Appropriations	Dedicated State Tax Revenues	Non Tax Revenues	Non-Dedicated State Tax Revenue
B.	Source of Funding - General Revenue Related				
	1. Parks	$ 64,000,000			$ 64,000,000
	2. Occupation Tax Revenue for Public Schools	689,429,000	689,429,000		
	3. Hotel-Motel Tax to the Department of Economic Development	39,481,423			39,481,423
	4. General Revenue Fund, Beginning Balance	1,444,200,832			1,444,200,832
	5. Available School Fund, Beginning Balance	15,031,000		15,031,000	
	6. State Textbook Fund, Beginning Balance	42,322,000		42,322,000	
	7. Foundation School Fund, Beginning Balance	136,394,466		21,263,897	115,130,569
	8. Motor Fuels (Unclaimed Motorboat Refunds)	31,480,550			31,480,550
	9. Motor Fuels Taxes	1,506,991,629	1,478,719,979		28,271,650
	10. Available School Fund Investment Income and Non-tax Revenue	1,693,070,827		1,693,070,827	
	11. State Textbook Fund Revenue	7,356,728		7,356,728	
	12. Foundation School Fund Revenue	1,632,004,379		1,632,004,379	
	13. Appropriations from Other Revenue	54,021,816,108		6,620,341,046	47,401,475,062
	SUBTOTAL (General Revenue Related)	$61,323,578,942	$2,168,148,979	$10,031,389,877	$49,124,040,086
II.	Insurance Company Maintenance Taxes	71,876			71,876
III.	Boat and Boat Motor Sales and Use Tax	4,558,497			4,558,497
IV.	Other Taxes Outside of General Revenue-Related Funds	42,552,066			42,552,066
	GRAND TOTAL	$61,370,761,381	$2,168,148,979	$10,031,389,877	$49,171,222,525

TABLE 7
CALCULATION OF "ALL OTHER LINE ITEMS"
FOR THE 2002-03 BIENNIUM

	2002	2003	2002-2003 Biennium
General Revenue Related Appropriations "Recap" Amount	$ 30,419,920,255	$ 30,749,653,436	$ 61,169,573,691
Less:			
Voter Registration (HB1, Article I-23)	3,000,000	500,000	3,500,000
Mixed Beverage Reimbursement (HB1, Article I-23)	74,072,000	75,531,000	149,603,000
County Taxes on University Lands (HB1, Article I-24)	1,250,000	1,250,000	2,500,000
Treasury Unclaimed Money Fund Receipts (HB1, Article I-24)	45,000,000	45,000,000	90,000,000
Ranger Pensions (HB1, Article I-24)	8,120	8,120	16,240
Comptroller: Social Security / Benefit Replacement Pay (HB1, Article I-29)	425,611,425	433,691,875	859,303,300
Employees Retirement System (HB1, Article I-34)	676,798,322	741,714,080	1,418,512,402
Department of Health: Tertiary Care Facilities from Unclaimed Lottery (HB1, Article II-77)	0	18,540,000	18,540,000
School for the Blind: Educational Professional Salary Increases (HB1, Article III-30)	177,144	366,437	543,581
School for the Deaf: Educational Professional Salary Increases (HB1, Article III-33)	227,784	470,829	698,613
Teacher Retirement System (HB1, Article III-40)	1,179,700,839	1,225,025,372	2,404,726,211
Teacher Retirement System: Group Health Insurance Program (HB1, Article III-34)	381,035,657	267,912,922	648,948,579
Teacher Retirement System: Optional Retirement Program (HB1, Article III-43)	94,802,675	99,542,809	194,345,484
Comptroller's Judicial Section (HB1, Article IV-18)	51,033,581	46,558,114	97,591,695

(continued)

TABLE 7
CALCULATION OF "ALL OTHER LINE ITEMS"
FOR THE 2002-03 BIENNIUM

Hotel-Motel Tax to Department of Economic Development (HB1, Article VII-4)	20,103,327	20,238,989	40,342,316
Board of Professional Land Surveying: National Exam (HB1, Article VIII-41)	11,900	8,400	20,300
Board of Examiners of Psychologists: National Exam (HB1, Article VIII-64)	112,500	112,500	225,000
Salary Increase for Employees of State Agencies (HB1, Article IX-77)	84,518,236	84,518,236	169,036,472
Subtotal, Line Items Shown Separately	$ 3,037,463,510	$ 3,060,989,683	$ 6,098,453,193
Total Other Line Items	$ 27,382,456,745	$ 27,688,663,753	$ 55,071,120,498

TRD-200207388
John Keel
Director
Legislative Budget Board
Filed: November 13, 2002

♦ ♦ ♦

Texas Lottery Commission

Instant Game No. 324 "Tic-Tac-Toe Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 324 is "TIC-TAC-TOE DOUBLER". The play style is "multiple tic-tac-toe".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 324 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 324.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $1,000, $20,000, DOUBLE DOLLAR SIGN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 324 - 1.2D

PLAY SYMBOL	CAPTION
1	
2	
3	
4	
5	
6	
7	
8	
9	
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
DOUBLE DOLLAR SIGN	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Figure 2: GAME NO. 324 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FOR	$4.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the

bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $4.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $40.00, $100.

I. High-Tier Prize - A prize of $1,000, $20,000.

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 (324), 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: 324-0000001-000.

L. Pack - A pack of "TIC-TAC-TOE DOUBLER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page, tickets 002 and 003 will be on the next page and so forth with tickets 248 and 249 on the last page. Please note the books will be in an A - B configuration.

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 "TIC-TAC-TOE DOUBLER" Instant Game No. 324 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 "TIC-TAC-TOE DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) play symbols. In each game, if the player matches the LUCKY NUMBER 3 times in any row, column, or diagonal, the player will win the prize for that game. If the player matches the LUCKY NUMBER 2 times with a double dollar sign symbol in any row, column or diagonal, the player will double the prize for that game. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate Lucky Number play symbols.

C. No 3 or more of a kind in a game with the exception of the Lucky Number symbol on intended winners.

D. The $$ symbol will only appear on intended winners and only once in a game.

E. All games will contain at least 4 matches to the Lucky Number.

2.3 Procedure for Claiming Prizes.

A. To claim a "TIC-TAC-TOE DOUBLER" Instant Game prize of $2.00, $3.00, $4.00, $10.00, $20.00, $40.00, or $100, 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 $100 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 "TIC-TAC-TOE DOUBLER" Instant Game prize of $1,000 or $20,000, 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 "TIC-TAC-TOE DOUBLER" 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 "TIC-TAC-TOE DOUBLER" 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 "TIC-TAC-TOE DOUBLER" 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 7,765,500 tickets in the Instant Game No. 324. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 324 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	1,056,309	7.35
$3.00	527,944	14.71
$4.00	481,408	16.13
$10.00	62,122	125.00
$20.00	46,601	166.64
$40.00	38,823	200.02
$100	11,472	676.91
$1,000	65	119,469.23
$20,000	8	970,687.50

*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 3.49. 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. 324 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. 324, 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-200207351
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 12, 2002

♦ ♦ ♦

Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, December 4, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Repo Ranch, Inc. dba Solution Homes to hear alleged violations of Sections 6(m) and 6(m)(1) of the Act by refusing to refund a deposit on a home. SOAH 332-03-0830. Department MHD2002001443-RD.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207324
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 7, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Tuesday, December 10, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and William Bell dba JFK Home Moving to hear alleged violations of Sections 7(d), 7(e), 7(f), 7(j)(3), 8(d), and 13(f) of the Act and Sections 80.122(e) and 80.125(e)(1) of the Rules by installing a home without obtaining, maintaining, or possessing a valid installer's license, entering into a contract and/or agreement without obtaining, maintaining, or possessing a valid installer's license, not applying for an installer's license, not obtaining the required bond prior to entering into an agreement to install homes, selling a used manufactured home without the appropriate, timely transfer of a good and marketable title. SOAH 332-03-0831. Department MHD2001000305-UI & MHD2000001921-UR.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207322
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 7, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Wednesday, December 11, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Stephenville House Mart, Inc. dba Your Home Store to hear alleged violations of Sections 7(j) and 7(k) of the Act and Section 80.127(a) of the Rules by furnishing false information on an application, report, or other document filed with the Department. SOAH 332-03-0863. Department MHD2003000181-LR.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207323
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 7, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Monday, December 16, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Robert G. and Constance E. Lukens Wittstruck to hear alleged violations of Sections 7(b), 7(c), 7(j)(3), and 8(d) of the Act and Sections 80.123(b) and 80.123(c) of the Rules by selling or negotiating to sell two or more manufactured homes within a twelve month period without obtaining, maintaining, or possessing a valid manufactured housing retailer's and/or brokers license and selling a used manufactured home without the appropriate, timely transfer of a good and marketable title. SOAH 332-03-0880. Department MHD2000001356-V.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207325
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 7, 2002

♦ ♦ ♦

Notice of Administrative Hearing

Wednesday, December 18, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Tommy E. Wells to hear alleged violations of Sections 7(b) and 7(c) of the Act and Section 80.123(b) and 80.123(c) of the Rules by selling or negotiating to sell two or more manufactured homes within a twelve month period without obtaining, maintaining, or possessing a valid manufactured housing retailer's and/or brokers license. SOAH 332-03-0832. Department MHD2002001605-UR.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207319
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 7, 2002

♦ ♦ ♦

Texas Department of Protective and Regulatory Services

Request for Proposal - Community Youth Development (CYD) Teen Summit

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals to provide Community Youth Development (CYD) Teen Summit services. PRS anticipates funding one contract as a result of this solicitation. The Request for Proposal (RFP) will be released on or about November 22, 2002. The RFP will be posted on the State Internet Site at www.marketplace.state.tx.us on the date of its release.

Brief Description of Services: The selected offeror will coordinate and fully cooperate with a planning committee, including PRS staff, to provide a CYD Teen Summit in an unspecified geographic area in Texas. The selected offeror will be expected to provide technical assistance to communities for the selection process for participants, and to prepare participants for the experience. The goal is to provide all of the logistics, resource materials, activities, and essentials of the annual CYD Teen Summit in Texas, that will assist in the strengthening of local CYD Youth Advisory Committees. The offeror shall meet the following Community Youth Development objectives, including: (1) to develop youth leaders; (2) to provide interactive experiences to foster youth-adult partnerships; and (3) to enhance skills needed to implement Youth Advisory Committee responsibilities. Training should include communication, community organization, and cultural competency skills.

The contract will be funded and managed by PRS.

Eligible Applicants: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Business (HUBS), Minority Business and Women's Enterprises, and Small Businesses are encouraged to apply.

Limitations: Total anticipated funding for the six and one-half month contract is a maximum award of $100,000 for February 15, 2003, through August 31, 2003. The funding allocated for the contract resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to

this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS intends to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due January 6, 2003, at 2:00 p.m. The effective date of the contract awarded under this RFP will be February 15, 2003, through August 31, 2003.

Contact Person: Potential offerors may obtain a copy of the RFP on or about November 22, 2003. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Vicki Logan, Mail Code Y-956; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-821-4767.

TRD-200207380
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: November 12, 2002

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On November 5, 2002, TCG Dallas and Southwestern Bell Telephone Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252 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 amendment is the result of certain outstanding issues resulting from *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996,* Docket Number 22315, Order Approving Revised Arbitration Award (March 14, 2001) related to line splitting, The joint application has been designated Docket Number 26895. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 90 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 26895. 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 December 17, 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 determine whether to conduct further proceedings concerning the joint application. 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 26895.

TRD-200207353
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

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Notice of Amendment to Interconnection Agreement

On November 5, 2002, Teleport Communications Houston, Inc. and Southwestern Bell Telephone Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252 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 amendment is the result of certain outstanding issues resulting from *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket Number 22315, Order Approving Revised Arbitration Award (March 14, 2001) related to line splitting, The joint application has been designated Docket Number 26896. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 90 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 26896. 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 December 17, 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 determine whether to conduct further proceedings concerning the joint application. 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 26896.

TRD-200207354
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

♦ ♦ ♦

Notice of Amendment to Interconnection Agreement

On November 5, 2002, AT&T Communications of Texas, LP and Southwestern Bell Telephone Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252 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 amendment is the result of certain outstanding issues resulting from *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996,* Docket Number 22315, Order Approving Revised Arbitration Award (March 14, 2001) related to line splitting, The joint application has been designated Docket Number 26897. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 90 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 26897. 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 December 17, 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 determine whether to conduct further proceedings concerning the joint application. 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 26897.

TRD-200207355
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 4, 2002, for retail electric provider (REP) certification, pursuant to §§39.101-39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of AmPro Energy Inc. for Retail Electric Provider (REP) certification, Docket Number 26886 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 3, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26886.

TRD-200207255
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2002

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a joint application for sale, transfer, or merger on November 4, 2002, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§ 37.154 (Vernon 1998 & Supplement 2002).

Docket Style and Number: Joint Application of Central Power and Light Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 26882.

The Application: The instant proceeding involves the transfer of two CPL transmission lines, the North Oak Park Project; and the Lon Hill Project and associated certificate rights. The Joint Applicants contend that the projects are needed to interconnect approximately 530 MW cogeneration facility in Nueces County known as the CITGO Power Plant, which is a joint project between CITGO (the steam host) and Corpus Christi Cogeneration LP (the steam and electricity provider).

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 26882.

TRD-200207335
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2002

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 4, 2002, for a service provider certificate of operating authority (SPCOA), pursuant to § §54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TopMost Connects, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 26891 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the entire State of Texas currently served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than November 27, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 26891.

TRD-200207253
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2002

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Notice of Filing Made to Offer New Services and Make a Minor Change Pursuant to the Public Utility Commission of Texas Substantive Rule §26.171

Notice is given to the public of Ganado's Telephone Company's application filed with the Public Utility Commission of Texas (commission) on October 31, 2002, to offer new services and make a minor change.

Docket Title and Number: Application of Ganado Telephone Company, Inc. for Approval to Offer New Services and Make a Minor Change Pursuant to the commission's Substantive Rule §26.171. Docket Number 26877.

The Application: On October 31, 2002, Ganado Telephone Company, Inc. (Ganado) filed an application to change an optional feature, offer new optional features, and implement a returned check charge in exchanges served by Ganado. No existing customer rates or charges are changed by this application. The new Custom Calling Service features introduced in the application are optional and only customers that choose to subscribe will pay the monthly rate associated with the feature(s) selected. The Returned Check Charge is only applicable if a customer's check is dishonored due to insufficient funds. Existing customers that subscribe to Calling Number Delivery will be automatically changed, at no charge, to a feature called Calling Name and Number Delivery. This change does not effect Calling Number Delivery functionality, it only adds Calling Name Delivery; it is not necessary to change customer owned equipment. The Calling Number Delivery monthly rate of $5.00 will be applicable for all current subscribers that are automatically changed to Calling Name and Number Delivery. This rate will remain frozen for current Calling Name and Number Delivery subscribers as long as the customer's local exchange access line service remains unchanged. Existing customers that order any change in local exchange access service, and new subscribers to Calling Name and Number Delivery will be charged the tariff rate of $9.50 per month. Customers are responsible for furnishing and maintaining customer-owned equipment that is essential to display Calling Number Delivery, Calling Name Delivery, and/or Call Waiting Identification information.

Description of Proposed New Services

Calling Name and Number Delivery - This feature enables the customer to receive the caller's name and number on incoming calls.

Call Waiting Identification (ID) - When a person is already speaking on the telephone and receives another phone call, Call Waiting ID service will allow for the display of the name and/or number of the new caller.

Do Not Disturb - This feature allows a subscriber to place their telephone in an apparent busy condition to all incoming calls without affecting the outgoing features of the line (i.e., calls and feature activations can be made).

Toll Restriction With PAC - This feature allows a subscriber to set up or change a personal account code (PAC) that can be used to invoke various service options assigned to their line, such as Toll Restriction and other enhanced call features.

Wake-Up Call - This feature allows a wake-up call to be set up to ring a subscriber's telephone at a preprogrammed time.

Returned Check Charge - The Returned Check Charge is applicable only if a customer's bank draft is returned due to insufficient funds.

The proposed effective date for the tariff change is February 1, 2003. For a copy of the proposed tariff or additional information regarding this application, customers may contact Ganado Telephone Company, Inc., at P.O. Box 329, Ganado, TX 77962, or call (361) 771-2180 during business hours.

Persons who wish to intervene, or comment, in this proceeding should notify the Public Utility Commission of Texas not later than **January 1, 2003**. Customers have a right to petition the Commission for a review of this application. The Commission may suspend the application for further review if 5%, or 159, of Ganado's existing customers sign a complaint relating to the proposed change. All comments or requests to intervene should be mailed to the Public Utility Commission of Texas. The Commission's contact information: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711- 3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet address: www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

TRD-200207377
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

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Notice of Intent to File Pursuant to the Public Utility Commission of Texas Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.215 on November 1, 2002.

Docket Title and Number. Verizon Southwest Application for Approval of LRIC Study for Corrections Collect Call Pursuant to the commission's Substantive Rule §26.215, Docket Number 26883.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26883. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207250
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2002

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Notice of Intent to File Pursuant to Public Utility Commission of Texas Substantive Rule §26.215

Notice is given to the public of the filing, on November 5, 2002, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule 26.215. The Applicant will file the LRIC study on November 15, 2002.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Expedited Order Charge Access Service Tariff Pursuant to the commission's Substantive Rule §26.215, Docket Number 26893.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26893. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207333
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2002

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Notice of Intent to File Pursuant to Public Utility Commission of Texas Substantive Rule §26.215

Notice is given to the public of the filing, on November 5, 2002, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.215. The Applicant will file the LRIC study on or about November 15, 2002.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Transfer Mode (ATM) Cell Relay Service (CRS) Pursuant to the commission's Substantive Rule §26.215, Docket Number 26898.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26898. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207334

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2002

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Notice of Intent to File Pursuant to Public Utility Commission of Texas Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.215 on November 5, 2002. The Applicant will file the LRIC study on November 15, 2002.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Additions and Modifications to SWBT's Universal Service Number (911) Tariff Pursuant to the commission's Substantive Rule §26.215, Docket Number 26899.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26899. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207332
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 8, 2002

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Notice of Interconnection Agreement

On November 4, 2002, Valor Telecommunications of Texas, LP 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 26887. 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 26887. 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 December 4, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26887.

TRD-200207252
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2002

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Notice of Interconnection Agreement

On November 5, 2002, ETEX 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 26894. 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 26894. 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 December 5, 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 26894.

TRD-200207251
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2002

♦ ♦ ♦

Notice of Petition for Declaratory Order

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition for declaratory order on October 28, 2002.

Docket Style and Number: Petition of Sweeny Cogeneration, L.P. for Declaratory Order. Docket Number 26863.

The Application: On October 28, 2002, Sweeny Cogeneration, L.P. (SCLP) filed with the Public Utility Commission of Texas (Commission) a petition for declaratory order. SCLP seeks a declaratory order finding that Texas New Mexico Power Company (TNMP) should reimburse SCLP for the net book value of SCLP's contribution to the cost of transmission facilities necessary to provide the interconnection between SCLP and the ERCOT transmission grid. SCLP seeks reimbursement in the amount of $4,354,518 and requests that the reimbursed cost of the facilities be established by the Commission to be includable in TNMP's transmission cost-of- service in future rate proceedings that establish TNMP's transmission rates.

The deadline for interested persons to intervene in this case is December 20, 2002. Persons who wish to intervene in or comment upon these proceedings should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136.

TRD-200207402
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

♦ ♦ ♦

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 18, 2002, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Leesville Exchange for Expanded Local Calling Service, Project Number 26654.

The petitioners in the Leesville exchange request ELCS to the exchanges of Luling, Saturn and Smiley.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512)936-7120 no later than November 22, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200207408
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

♦ ♦ ♦

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 18, 2002, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Benjamin Exchange for Expanded Local Calling Service, Project Number 26655.

The petitioners in the Benjamin exchange request ELCS to the exchange of Rochester.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512)936-7120 no later than November 22, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200207409
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

♦ ♦ ♦

Notice of Relinquishment of a Service Provider Certificate of Operating Authority

On November 6, 2002, Stonebridge Communications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60480.

The Application: Application of Stonebridge Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26901.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 27, 2002. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26901.

TRD-200207356
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

♦ ♦ ♦

Notice of Workshop on Wholesale Market Design Issues in the Electric Reliability Council of Texas

The Public Utility Commission of Texas (commission) will hold a workshop regarding wholesale market design issues in the Electric Reliability Council of Texas (ERCOT), on Monday, December 2, 2002, beginning at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 26376, *Rulemaking Proceeding on Wholesale Market Design Issues in the Electric Reliability Council of Texas,* has been established for this proceeding. This meeting will discuss the possibility of implementing an ERCOT-run day-ahead energy market, focusing on the different options the commission and ERCOT market participants have for the design of such a market if the commission were to find that such a day-ahead market would be a cost-effective improvement to the ERCOT wholesale market.

The commission expects to make available in Central Records under Project Number 26376 an agenda for the format of the workshop, seven days prior to the workshop.

Questions concerning the workshop or this notice should be directed to Eric S. Schubert, Senior Market Economist, Market Oversight Division, 512-936-7398, eric.schubert@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207366
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

♦ ♦ ♦

Project Number 26912 Notice of Intent to Review the Renewable Energy Credits Program

The Public Utility Commission of Texas (commission) has initiated a review of the renewable energy credit (REC) trading program in the Texas electric market. Commission Staff has opened this project in response to a variety of issues raised by parties in connection with the REC program. Staff believes that such issues should be discussed in an open forum by all affected parties. Project Number 26912, *P.U.C. Project to Review the Renewable Energy Credits Program Pursuant to §25.173(q),* has been established for this proceeding.

A list of questions related to the REC program will be posted on the commission's web site, located at www.puc.state.tx.us, before November 22, 2002. The questions will be linked to Project Number 26912 from the Electric Projects page and will be discussed during a public workshop in late November or early December. The date and location of the workshop will be posted on the commission's web site, along with a timeline for comments and replies.

Questions concerning Project Number 26912 may be referred to David Hurlbut, Market Oversight Division, (512) 936-7387. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207382
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2002

♦ ♦ ♦

Request for Comments on Rate Filing Package for Transmission and Distribution Investor-Owned Utilities

The Public Utility Commission of Texas (commission) proposes a new form, *Rate Filing Package for Transmission and Distribution Investor-Owned Utilities,* to be used by investor-owned transmission and distribution utilities when filing applications to change rates pursuant to the Public Utility Regulatory Act (PURA) (Vernon 1998, Supplement 2002). The proposed rate filing package is to be used for rate changes under PURA §36.102 and §36.153. Project Number 26470 has been established for this proceeding.

Copies of the proposed rate filing package are available in the commission's Central Records Division, Room G-113, under Project Number 26470.

In addition to comments on the proposed rate filing package, the commission also requests interested parties to file comments on the following questions:

(1) Can utilities file a transmission only rate case? Can they file a distribution only rate case? Can utilities file a wholesale rate case without the retail transmission and distribution rate case? Can utilities file a retail transmission and distribution rate case without a wholesale transmission and distribution rate case?

(2) Is it necessary to separate costs into the six distinct functions required by the proposed rate filing package or can some functions be combined?

(3) Please identify which sections of the proposed rate filing package may not be applicable to all utilities. Identify all situations that make the schedules inapplicable.

(4) Please comment on the appropriateness of the proposed general functionalization factors. If appropriate, recommend alternative generic functionalization factors with supporting rationale.

(5) Assuming the commission has jurisdiction to implement performance based ratemaking, what additional information not addressed in this rate filing package would need to be provided by the parties to implement performance based ratemaking on a prospective basis? What commission rule amendments may be necessary in order to implement performance based ratemaking?

Written comments on the proposed rate filing package and questions may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 on or before December 20, 2002. Reply comments, if any, should be submitted on or before January 10, 2003. All comments should refer to Project Number 26470.

Questions concerning the proposed rate filing package or this notice should be directed to Ruth Stark, Director of Accounting, Financial Review Division, (512)936-7460 or ruth.stark@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200207381
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 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
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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