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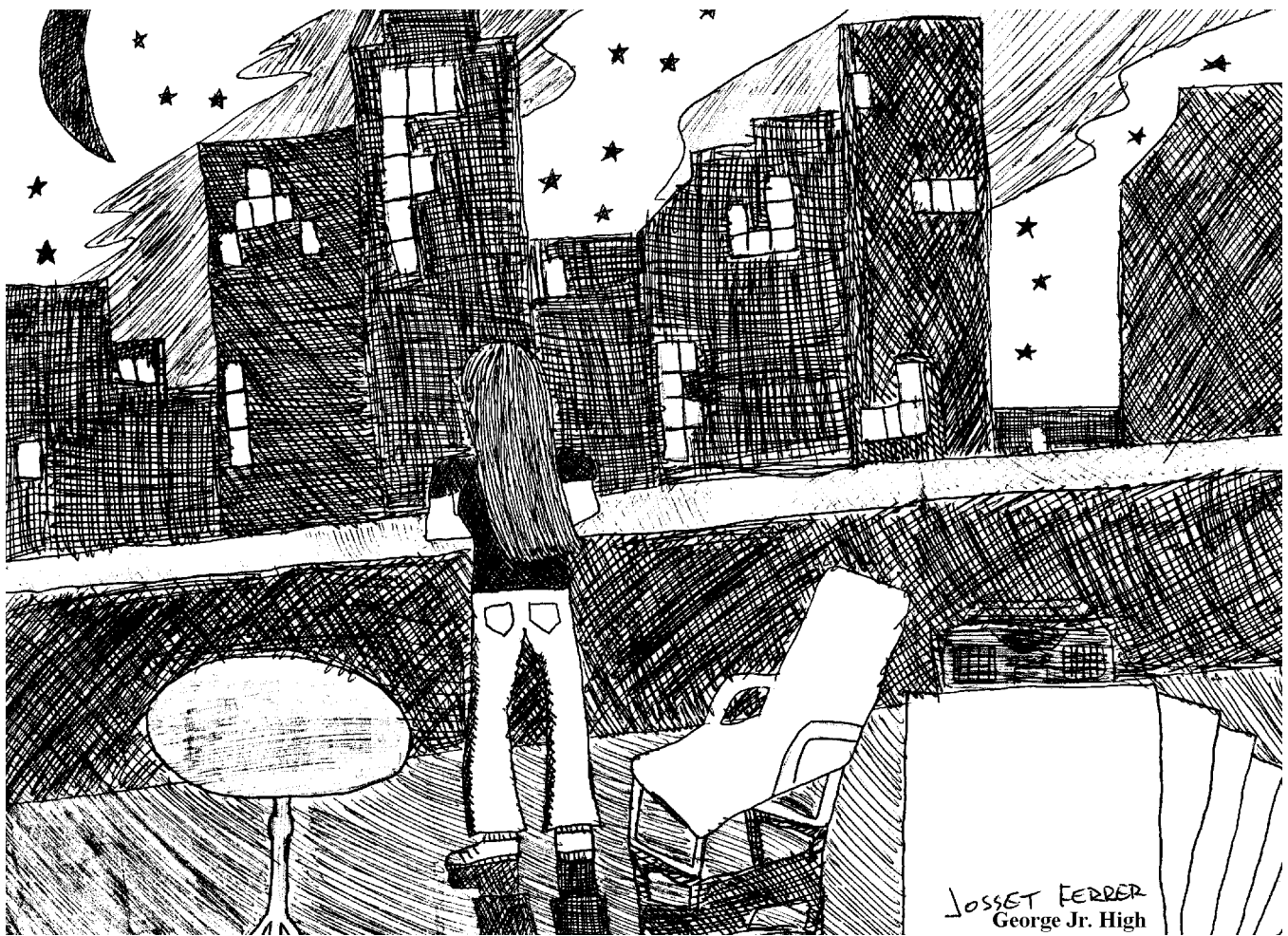
# TEXAS REGISTER

Volume 30 Number 1

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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.

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# TEXAS REGISTER

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# Open Meetings

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

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

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

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

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



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

# THE GOVERNOR

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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.

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## Appointments

### Appointments for December 23, 2004

Appointed to the Texas Commission on Jail Standards for a term to expire January 31, 2005, Stanley Dewayne Egger of Tuscola (replacing Jimmy Jackson of Carrollton who resigned).

Appointed to the State Commission on Judicial Conduct for a term to expire November 11, 2009, Gilbert Herrera of Houston (replacing Gilbert Martinez of Austin whose term expired).

Appointed to the State Commission on Judicial Conduct for a term to expire November 11, 2009, William A. "Buck" Prewitt, III of Horse-shoe Bay (replacing Elizabeth Coats of Houston whose term expired).

Appointed to the Texas Board of Pardons and Paroles for a term to expire February 1, 2005, Jackie deNoyelles of Flint (replacing Lafayette Collins who resigned).

Appointed as Justice of the Ninth Court of Appeals District, Place 4, pursuant to HB 2261, 78th Legislature, Regular Session, for a term until the next General Election and until his successor shall be duly elected and qualified, Henry Hollis Horton, III of Beaumont.

Rick Perry, Governor

TRD-200407499



# 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. GA-0276

The Honorable James L. Keffer  
Chair, Committee on Economic Development  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a home-rule city may extend a Tax Code, chapter 311 reinvestment zone's termination date beyond the date provided in the ordinance designating the zone (RQ-0238-GA)

#### SUMMARY

A home-rule city may not extend a Tax Code, chapter 311 reinvestment zone's termination date beyond the date provided in the ordinance designating the zone.

### Opinion No. GA-0277

Mr. Ray Stelly, C.P.A.  
San Jacinto County Auditor  
1 State Highway 150, Room B1  
Coldspring, Texas 77331

Re: Executive sessions of the San Jacinto County Commissioners Court (RQ-0241-GA)

#### SUMMARY

The county clerk is required by section 81.003 of the Local Government Code to keep the records of all open meetings of a commissioners court. The commissioners court as a governmental body has the discretion to allow or deny the county clerk admission to executive sessions of the court. The commissioners court as a governmental body is the proper custodian of the tape of an executive session, but it may delegate that duty to the county clerk. A commissioners court acts by majority vote of its members; a single member acting alone has no authority to alter court policy. A release of the tape of an executive session to the county clerk would not render the tape a public document under the Public Information Act. Such a tape may be released to the public only under court order.

### Opinion No. GA-0278

The Honorable Frank J. Corte Jr.  
Chair, Committee on Defense Affairs and State-Federal Relations  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether constitutional authorization of video lottery terminals on Indian tribal lands would permit Indian tribes to offer casino gambling in Texas (RQ-0214-GA)

#### SUMMARY

The Restoration Act does not authorize the Alabama- Coushatta and the Ysleta del Sur Pueblo tribes to operate VLTs on tribal land.

Whether a federally recognized Texas Indian tribe may negotiate with Texas under the Indian Gaming Regulatory Act about only the specific Class III games allowed by Texas law, or whether it may negotiate about all Class III games is an open question in this state.

A tribal-state compact for Class III gaming activities under the IGRA may include provisions allowing state assessments of gaming activities as necessary to defer the costs of regulating the gaming activities. A compact may not allow the state to receive a share of Class III gaming revenues unless the compact grants territorial exclusivity or another unique economic benefit to the tribe.

### Opinion No. GA-0279

The Honorable Fred Hill  
Chair, Committee on Local Government Ways and Means  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether the placement of one-party foreclosable contractual liens on land by a developer that supersede the homestead rights created in article XVI, section 50 of the Texas Constitution violates the Texas Homestead Act (RQ-0236-GA)

#### SUMMARY

A property owner may encumber real property with a covenant running with the land, which, depending on the particular instruments and circumstances involved, may be enforced by foreclosure without violating subsequent purchasers' constitutional and statutory homestead rights.

**Opinion No. GA-0280**

The Honorable Jose R. Rodriguez  
El Paso County Attorney  
County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

Re: Whether the Border Health Institute is a state agency for various purposes (RQ-0229-GA)

**S U M M A R Y**

The Border Health Institute is neither a state agency within the executive branch of state government nor a local political subdivision. The BHI may or may not be entitled to sovereign immunity. It must comply with the Open Meetings Act and the Public Information Act. It is not required to follow state procurement and contracting rules, nor is it subject to civil service rules. The BHI need not obtain nonprofit corporation status because it has statutory authority to solicit funding from public and private sources.

**Opinion No. GA-0281**

Mr. Lowry Mays, Chair  
Board of Regents  
The Texas A&M University System  
Post Office Box C-1  
College Station, Texas 77843

Re: Whether the Texas Workforce Commission Civil Rights Division is properly interpreting the equal employment opportunity training requirement of Labor Code section 21.556(a) (RQ-0240-GA)

**S U M M A R Y**

Section 21.556(a) of the Labor Code requires a state agency to provide equal employment opportunity training after three employment discrimination complaints have been filed against the agency other than complaints determined to be without merit. Section 21.556 does not require that the Texas Workforce Commission Civil Rights Division find reasonable cause that discrimination has likely occurred in order to determine that a complaint counts toward the training requirement. The Texas Workforce Commission Civil Rights Division rule establishing a procedure to determine whether a complaint is without merit reasonably construes section 21.556(a). However, the Commission's interpretation of the rule must be consistent with the rule's plain language.

**Opinion No. GA-0282**

Mr. Wayne Thorburn  
Administrator  
Texas Real Estate Commission  
Post Office Box 12188  
Austin, Texas 78711-2188

Re: Whether the Texas Real Estate Commission may establish by rule minimum service standards for a real estate broker who enters into an exclusive agency relationship with a party to a real estate transaction (RQ-0224-GA)

**S U M M A R Y**

The Texas Real Estate Commission has proposed three rules that purport to clarify a listing broker's duties when negotiating for a client.

Proposed Administrative Code section 535.2(d), which provides that a listing broker may not refuse to provide certain services to that broker's principal, is valid. Proposed Administrative Code section 535.2(e), which prohibits behavior already prohibited by Occupations Code section 1101.652, is valid. Finally, proposed Administrative Code section 535.2(f), which describes conduct that would not violate agency rules or the Texas Real Estate License Act, is valid.

**Opinion No. GA-0283**

The Honorable Mike Stafford  
Harris County Attorney  
Appraisal District Section  
Post Office Box 920975  
Houston, Texas 77292-0975

Re: Whether Tax Code section 6.025(d) requires chief appraisers in overlapping appraisal districts to enter on the tax roll either the property's lowest market value or lowest appraised value established by the two districts, but not both the lowest market value and the lowest appraised value (RQ-0239-GA)

**S U M M A R Y**

With respect to property lying in overlapping appraisal districts, section 6.025(d) of the Tax Code requires the chief appraiser of each of the overlapping districts to enter in the appraisal records the lowest values, appraised and market, listed by any of the overlapping districts.

**Opinion No. GA-0284**

The Honorable Tom Maness  
Jefferson County Criminal District Attorney  
Post Office Box 2553  
Beaumont, Texas 77704

Re: Which entity has authority to approve retirement and medical benefits for the Jefferson County Waterway and Navigation District Board members: the Jefferson County Commissioners Court or the Waterway and Navigation District Board (RQ-0243-GA)

**S U M M A R Y**

Section 62.070 of the Water Code, which authorizes a county commissioners court to determine "compensation" for navigation district commissioners, pertains only to monetary compensation. The navigation district may determine whether to provide district commissioners with retirement and medical benefits under sections 60.011 and 60.014 of the Water Code. The navigation district board also may determine whether to pay a portion of the commissioners' dependents' coverage under section 172.004 of the Local Government Code.

**Opinion No. GA-0285**

Donald W. Patrick, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners  
Post Office Box 2018  
Austin, Texas 78768-2018

Re: Proper construction of Occupations Code section 155.051, which establishes a time period for applicants to take the medical license examination, and section 155.056, which limits the number of times an applicant may take the examination (RQ-0248-GA)

**S U M M A R Y**



The Texas State Board of Medical Examiners' interpretation of Occupations Code section 155.051, which establishes a time period for applicants to complete the medical license examination, and section 155.056, which limits the number of attempts to pass the examination, is reasonable and does not exceed the Board's statutory authority. Given the interest in protecting public health, section 155.051 is mandatory. Accordingly, the doctrine of substantial compliance is irrelevant to determining whether an applicant has complied with section 155.051.

**Opinion No. GA-0286**

Mr. R. Dyke Rogers, Chairman

Texas Racing Commission

Post Office Box 12080

Austin, Texas 78711-2080

Re: Whether the Texas Racing Commission may grant a license for a racetrack without a formal certification of election results to the Secretary of State; and whether the Commission may initiate a license application process for a county following a formal election certification that occurs more than ten days after the canvass of returns (RQ-0258-GA)

**S U M M A R Y**

As a restriction on the Texas Racing Commission's authority, section 16.01(a) of the Texas Racing Act is mandatory. Certification of local option election results must be made to the Secretary of State before the Texas Racing Commission may accept or act on a license application. The Texas Racing Commission has the discretion to determine whether a given action or document preceding a license application constitutes certification under section 16.01(a).

Section 16.12(a) is a statutory enactment concerning elections and, absent a showing that departure from the requirement changes the result of the election, ordinarily should be given a directory construction. Both the certification component and the timing component of section

16.12(a) are directory and require only substantial compliance. Questions of substantial compliance are fact questions outside the scope of the opinion process. Accordingly, this office cannot determine whether Webb County or Hidalgo County substantially complied with section 16.12(a), but leave that determination to the Commission.

**Opinion No. GA-0287**

Ms. Dale B. Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

1917 IH-35 South

Austin, Texas 78741

Re: Whether the seal of a professional engineer licensed in Texas may be placed on engineering plans, specifications, and other documents relating to projects not to be constructed in Texas (RQ-0244-GA)

**S U M M A R Y**

A professional engineer licensed in Texas must place his seal on engineering plans, specifications, plats, and reports prepared under authority of his Texas license, even if the project will not be constructed in Texas. Whether documents prepared and sealed by an engineer under authority of his Texas license may legally be used for construction in another state or country depends upon the laws of that jurisdiction.

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

TRD-200407519

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: December 29, 2004



# EMERGENCY RULES

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

## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

##### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS- ACTIVECARE)

###### 34 TAC §41.42

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §41.42, concerning payment of supplemental compensation. The amendments update the section in light of the discontinuation of TRS's health reimbursement account (HRA) program and primarily address the definitions of terms used in the section. Effective beginning with fiscal year 2005, the amendments change the term "professional employee" to "professional staff" but continue to apply the same definition to the renamed term. The amendments also specify which entities are affected by the rule and fully define full-time and part-time employees rather than referring to definitions in prior statutes. The emergency amendments are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

The HRA program was to go into effect on September 1, 2004, and the definitions of the appropriate terms were contained in those rules. However, the HRA program was discontinued effective September 1, 2004, requiring that the definitions be made applicable to the supplemental compensation program for fiscal year 2005 and that certain terms be fully defined so that the supplemental compensation can be paid to eligible employees during fiscal year 2005.

The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. In addition, the amendments are adopted on an emergency basis under the Chapter 825, §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for, among other things, the transaction of business of the board. The amendments are also adopted under House Bill 1, 78th Legislature, Regular Session, which defines the supplemental compensation program effective September 1, 2004.

There are no other codes affected.

§41.42. *Payment of Supplemental Compensation.*

(a) For each designated report month, a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center ~~[entities eligible to receive and to hold in trust supplemental compensation under Insurance Code Article 3.50-8 or Insurance Code Chapter 1580]~~ ("entity" or "entities") shall report to the Texas Education Agency (TEA), in the manner prescribed by TRS, the number of full-time and part-time employees, as defined herein, eligible to receive supplemental compensation and the total number of professional staff ~~[employees]~~, as defined herein, as determined by the entity in accordance with requirements established by TRS. TEA must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month, or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month. TEA or TRS may dispute, seek verification of, or conduct an investigation regarding the reported number of ~~employees and staff~~ ~~[participating members]~~ at any time after receiving the report.

(b) For purposes of this section, an individual is employed as a full-time employee if the individual:

(1) ~~is a participating member of TRS;~~

(2) ~~is employed by a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center;~~

(3) ~~is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under Chapter 1575, Texas Insurance Code;~~

(4) ~~[meets the definition of "employee under Article 3.50-8 or Chapter 1580, Insurance Code, the individual] is not [a] professional staff; [employee;] and [the individual]~~

(5) ~~works for an entity or any combination of entities for 30 or more hours each week.~~

(c) For purposes of this section, an individual is employed as a part-time employee if the individual:

(1) ~~is a participating member of TRS;~~

(2) ~~is employed by a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center;~~

(3) ~~is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under Chapter 1575, Texas Insurance Code;~~

(4) ~~[meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual] is not [a] professional staff; [employee;] and~~

(5) ~~[the individual] works for an entity or any combination of entities for less than 30 hours each week.~~

(d) For purposes of this section, ~~beginning in~~ ~~during~~ state fiscal year ~~2005~~ [2004], an individual is [a] professional ~~staff~~ [employee] if:

(1) 50% or more of the individual's time is reported under any combination of the following role identifications in the Public Education Information Management System (PEIMS), or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:  
Figure: 34 TAC §41.42(d)(1) (No change.)

(2) or the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the following role identifications in PEIMS, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:  
Figure: 34 TAC §41.42(d)(2) (No change.)

(3) or, regardless of how the individual's time is reported in PEIMS, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in paragraph (1) or (2) of this subsection, as determined by the reporting entity or combination of entities.

(e) If TEA receives the report on or before the deadline and neither TRS nor TEA seeks verification of, investigates, or otherwise disputes information in the report upon initial review, subject to later adjustment if TRS determines that there are errors in the report, TRS will remit to the entity, subject to the availability of funds appropriated for this purpose:

(1) an amount equal to the number of full-time employees, reported by the entity for the reporting month divided by 12 and multiplied by \$500;

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month divided by 12 and multiplied by \$250.

(f) If a report is submitted after the deadline under this section, remittance to the reporting entity will be delayed by at least one month even if neither TEA nor TRS disputes or seeks verification of the numbers reported. In the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate monthly supplement to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section. Entities must continue to make the appropriate monthly distribution to eligible individuals for so long as such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution from another entity for employment that occurred earlier in the same month. Entities must submit proposed adjustments to previously reported numbers through September 30 of the fiscal year following the reporting month. TRS or TEA may make adjustments to previously reported numbers and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity, at any time after receipt of a report.

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

Filed with the Office of the Secretary of State on December 22, 2004.

TRD-200407473

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: December 22, 2004

Expiration Date: April 19, 2005

For further information, please call: (512) 542-6115

◆ ◆ ◆

# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 49. 2005 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

##### 10 TAC §§49.3, 49.7, 49.9

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §49.3, relating to Definitions, §49.7, relating to Regional Allocation Formula, Set-Asides, Redistribution of Credits, and §49.9, relating to Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations of the 2005 Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10942). The sections are amended in order to enact changes considering the Governor's rejection of the 2005 qualified allocation plan and the Governor's direction to the Department to quickly address the matter to ensure no delay in implementing the tax credit program. On December 17, 2005, by Order 05-01, the Governor modified and approved the 2005 qualified allocation plan with these amendments.

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

Ms. Carrington also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be the fair administration of the qualified allocation plan for the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. There will be no effect on small businesses or persons. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments may be submitted to Brooke Boston, Director of Multifamily Finance Production, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by e-mail at the following address: brooke.boston@tdhca.state.tx.us.

The amendments are proposed under the Texas Government Code, Chapter 2306; the Internal Revenue Code of 1986, §42, as amended, which provides the Department with the authority to

adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing tax credit allocations in the State of Texas.

No other code, article or statute is affected by these amendments.

##### §49.3. Definitions.

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

(1) - (11) (No change.)

(12) At-Risk Development--a Development that:

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3)[; (4)] and (5), National Housing Act (12 U.S.C. Section 17151);

(ii) - (iv) (No change.)

(v) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development [~~any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of 1937~~];

(vi) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) [~~(vii)~~] Sections 514, 515, and 516[; and 538] Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); and

(viii) [~~(viii)~~] Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42), and

(B) (No change.)

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site[; ~~except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, will be qualified as an At-Risk Development if it meets the requirements described in §49.7(b)(2) of this title~~].

(D) [~~With the exception of Housing Authorities proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund,~~] Developments must be at risk of losing all affordability on the site. However, Developments that have an opportunity to retain or renew any of the financial

benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development. (2306.6702)

(13) - (82) (No change.)

§49.7. *Regional Allocation Formula, Set-Asides, Redistribution of Credits.*

(a) (No change.)

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (2306.111(d))

(1) (No change.)

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under the At-Risk Development Set-Aside. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of developments designated as At-Risk Developments as defined in §49.3(12) of this title. (2306.6714). [~~A Housing Authority proposing reconstruction of public housing supplemented with HOPE VI funding or capital grant funds will be eligible to participate in this set-aside. In order to qualify for this set-aside, the housing authority providing the HOPE VI funding must provide evidence that it received a HOPE VI grant from HUD and made a commitment that HOPE VI funds will be provided to the Development.~~] To qualify as an At-Risk Development, the Applicant [(with the exception of housing authorities with HOPE VI or capital grant funds)] must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §49.3(12)(A) of this title, or provide evidence that it will renew, retain or preserve the financial benefit described in §49.3(12)(A) of this title.

(c) (No change.)

§49.9. *Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.*

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

(f) Threshold Criteria. The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

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

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) - (F) (No change.)

(G) A certification that the Development will be equipped with energy saving devices that meet the 2000 [adhere to the 2003] International Energy Conservation Code (IECC), which is the standard statewide energy code adopted by the state energy conservation office [in the construction of each tax credit Unit], unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned or utilize evaporative coolers. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (2306.6725(b))

(H) - (I) (No change.)

(5) - (11) (No change.)

(12) Applicants applying for acquisition credits, or Applicants and Development Team members affiliated with the seller that

are asking for the land value to be an amount greater than the acquisition cost indicated in the original purchase contract, will be evaluated in accordance with §1.32 of this title and must provide all of the documentation described in subparagraphs (A) - (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application.

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

(C) clear identification of the selling Persons, and any owner of the property within the last 36 months prior to the first day of the Application Acceptance Period, and details of any relationship between said selling Persons and owners and the Applicant, Developer, Property Manager, General Contractor, Qualified Market Analyst, or any other professional or other consultant performing services with respect to the Development. Only in the event that [If any] such relationship exists, the following documents must be provided:

(i) (No change.)

(ii) any other verifiable costs of owning, holding, or improving the property that when added to the value from clause (i) of this subparagraph justifies the Applicant's proposed acquisition amount:

(I) (No change.)

(II) for transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure [indifferent to foreclosure or breakeven transfer]; and

(D) (No change.)

(13) - (15) (No change.)

(g) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. Maximum Total Points: 209 [240].

(1) - (6) (No change.)

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (2306.6710(b)(1)(G)) Use normal rounding for this section. If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit

rent, then the Development shall be awarded 12 points. Developments that are scattered site or 100% transitional will receive the full 12 points provided that they have received points under paragraph (3) of this subsection. [Applications may qualify to receive up to 12 points for qualifying under this exhibit. (2306.6710(b)(1)(G)) Use normal rounding for this section. If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. Developments that are scattered site or 100% transitional will receive the full 12 points provided that they have received points under paragraph (3) of this subsection.]

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

(13) Development Location. (2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i); 42 U.S.C. 3608(d) and (e)(5)) Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) - (H) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (H) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (H) of this paragraph. [Development Location. (2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i); 42 U.S.C. 3608(d) and (e)(5)) Applications may qualify to receive either 4 or 7 points. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) - (H) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (F) of this paragraph will receive 4 points. Areas qualifying under any one of the subparagraphs (G) - (H) of this paragraph will receive 7 points. An Application may only receive points under one of the subparagraphs (A) - (H) of this paragraph.]

(A) - (H) (No change.)

(14) Exurban Developments or Reconstruction or Rehabilitation of Developments (Development characteristics). Applications may qualify to receive 7 points if the Development is located in an incorporated place or census designated place that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year, or if a Development is proposed for reconstruction or rehabilitation (in whole or in part, on-site or off-site) that will be financed, in part, with HOPE VI financing or HUD capital grant financing provided that the Application is a joint venture partnership between the public housing authority or an entity formed by the public housing authority and private market interests (either for profit or nonprofit). [Exurban Developments. Applications may qualify to receive 7 points if the Development is located in an incorporated place or census designated place that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by

the United States Bureau of the Census as of October 1 of the year preceding the applicable program year.]

(15) - (24) (No change.)

(h) - (i) (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 December 22, 2004.

TRD-200407470

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: February 6, 2005

For further information, please call: (512) 475-3726

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

##### SUBCHAPTER C. FEES

###### 16 TAC §60.83

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §60.83 regarding late renewal fees as it applies to individuals on active duty in the United States armed forces serving outside the state.

Section 60.83 is amended by adding new subsection (d) to comply with Texas Occupations Code §55.002, which exempts individuals who hold a license issued by a state agency from increased fees or other penalties for failing to renew their license in a timely manner if they satisfactorily establish that the reason they failed to timely renew was because they were on active duty in the United States armed forces serving outside of the state.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the proposed amendment.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public benefit will be a reduction in the number of individuals serving in the United States armed forces outside the state that decline to renew their licenses because of late renewal fees.

There will be no effect on small or micro-businesses as a result of the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the rule as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711,

or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapter 55 which requires state agencies to adopt rules to exempt military personnel who hold state licenses from incurring penalties or additional fees if they were on active duty in the armed forces and serving outside of the state and Texas Occupations Code, Chapter 51 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 55. No other statutes, articles, or codes are affected by the proposal.

§60.83. *Late Renewal Fees.*

(a) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the normally required renewal fee.

(b) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying a late renewal fee equal to two times the normally required renewal fee.

(c) A person paying a late renewal fee is not required to pay the normally required renewal fee.

(d) Pursuant to Title 2, Occupations Code, §55.002, an individual who fails to renew a license in a timely manner and whose license has been expired for less than one year is exempt from the requirement to pay a late renewal fee if the individual furnishes to the department satisfactory documentation that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state. An individual who is exempt from paying a late renewal fee under this subsection may renew the license by paying the normally required renewal fee.

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 December 21, 2004.

TRD-200407445

William H. Kuntz, Jr.  
Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 6, 2005

For further information, please call: (512) 463-7348



## TITLE 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

##### 22 TAC §153.9

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.9, concerning Applications. The proposed amendment removes the notary requirement from Texas Appraiser Licensing and Certification Board forms previously adopted by reference. The proposed amendment also revises the form title and form number at the bottom of each form.

The Application for Provisional Appraiser License, TALCB Form APL 2-0 (804) and Appraisal Experience Explanation, TALCB Form AEE 6A-0 (804) are existing forms that are now being proposed for inclusion with other TALCB forms adopted by reference.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of these changes will facilitate the identification of TALCB forms. The notary requirement removal facilitates the submission of application forms when applying for certification, licensing, approval as an appraiser trainee, and when submitting confirmation of appraisal experience on the Appraisal Experience Affidavit. There will be no effect on small or micro-businesses. There is no effect on individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

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

§153.9. *Applications.*

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for Appraiser Certification or Licensing, TALCB Form ACL 1-0 (04);

(2) Application for Provisional Appraiser License, TALCB Form APL 2-0 (804) [Appraisal Experience Affidavit];

(3) Affidavit Declining Sponsorship, TALCB Form ADS 2A-0 (804) [Appraisal Experience Log];

(4) Application for Approval as an Appraiser Trainee, TALCB Form AAT 3-0 (804);

(5) Supplement to Application for Appraiser Certification or Licensing by Reciprocity, TALCB Form ACR 4-0 (804) [Request for Course Approval and Renewal];

(6) Temporary Non-Resident Appraiser Registration, TALCB Form TRN 5-0 (804);

(7) Extension of Non-Resident Temporary Practice Registration, TALCB Form NRE 5E-0 (804)[Change of Office Address];

(8) Appraiser Experience Affidavit, TALCB Form AEA 6-0 (804) [Addition or Termination of Appraiser Trainee Sponsorship];

(9) Appraiser Experience Log, TALCB Form AEL 7-0 (804) [Supplement to Application for Appraiser Certification or Licensing by Reciprocity];

(10) Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form TAT 8-0 (804) [Extension of Non-Resident Temporary Practice Registration] ;

(11) Change of Office Address, TALCB Form COA 9-0 (804) [Extension Request Form Residential/General and State Licensed Appraisers];

(12) Request for Course Approval and Renewal, TALCB Form CAR 10.0 (804) [Extension Request Form for Provisional Licensee];

(13) Extension Request Form (For Residential/General Certified and State Licensed Appraisers) [Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers)];

(14) Extension Request Form for Provisional Licensee [Request for Inactive Status Form (For an Expired Licensee-Not for Provisional Licensee); and];

(15) Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers) [Request for Active Status Form];

(16) Request for Active Status Form; and

(17) Appraisal Experience Explanation, TALCB Form AEE 6A-0 (804).

(c) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 23, 2004.

TRD-200407496

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: February 6, 2005

For further information, please call: (512) 465-3950



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

##### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

###### 34 TAC §41.42

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.42, concerning payment of supplemental

compensation to employees of school districts, other educational districts, charter schools, and regional education service centers. The section outlines the reporting requirements for school districts, other educational districts whose employees are members of TRS, participating charter schools, or regional education service centers for the payment of supplemental compensation and also defines full-time, part-time, and professional employees, and specifies which classifications of employees are eligible to receive the supplemental compensation. The proposed amendments update the section in light of the discontinuation of TRS's health reimbursement account (HRA) program. The proposed amendments have been adopted on an emergency basis as published in this issue of the *Texas Register*.

The proposed amendments primarily address the definitions of terms used in the rule. The amendments change the term "professional employee" to "professional staff" but continue to apply the same definition to the renamed term beginning in fiscal year 2005. The amendments also specify which entities are affected by the rule and fully define full-time and part-time employees rather than referring to definitions in prior statutes.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule. There is no foreseeable effect on local employment or local economies as a result of the proposed amendments. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed amendments.

Mr. Galaviz has also determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of the rule will be that affected employers and employees will have notice of these requirements, employers will know which employees receive what amount of supplemental compensation, and only eligible individuals will receive the supplemental compensation. Mr. Galaviz has determined that there are no anticipated economic costs to persons required to comply with the proposed rule.

Comments on the proposal may be submitted to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the Board. These amendments are also proposed under House Bill 1, 78th Legislature, Regular Session, which defines the supplemental compensation program beginning on September 1, 2004.

There are no other codes affected.

###### §41.42. *Payment of Supplemental Compensation.*

(a) For each designated report month, a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center [entities eligible to receive and to hold in trust supplemental compensation under Insurance Code Article 3.50-8 or Insurance Code Chapter 1580] ("entity" or "entities") shall report to the Texas Education Agency (TEA), in the manner prescribed by TRS, the number of full-time and part-time employees, as defined herein, eligible to receive supplemental compensation and the total number of professional staff [employees], as defined



herein, as determined by the entity in accordance with requirements established by TRS. TEA must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month, or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month. TEA or TRS may dispute, seek verification of, or conduct an investigation regarding the reported number of employees and staff [~~participating members~~] at any time after receiving the report.

(b) For purposes of this section, an individual is employed as a full-time employee if the individual:

(1) is a participating member of TRS;

(2) is employed by a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center;

(3) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under Chapter 1575, Texas Insurance Code;

(4) [~~meets the definition of "employee under Article 3.50-8 or Chapter 1580, Insurance Code, the individual~~] is not [a] professional staff; [~~employee,~~] and [~~the individual~~]

(5) works for an entity or any combination of entities for 30 or more hours each week.

(c) For purposes of this section, an individual is employed as a part-time employee if the individual:

(1) is a participating member of TRS;

(2) is employed by a school district, other educational district whose employees are members of TRS, participating charter school, or regional education service center;

(3) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under Chapter 1575, Texas Insurance Code;

(4) [~~meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual~~] is not [a] professional staff; [~~employee,~~] and

(5) [~~the individual~~] works for an entity or any combination of entities for less than 30 hours each week.

(d) For purposes of this section, beginning in [~~during~~] state fiscal year 2005 [~~2004~~], an individual is [a] professional staff [~~employee~~] if:

(1) 50% or more of the individual's time is reported under any combination of the following role identifications in the Public Education Information Management System (PEIMS), or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:

Figure: 34 TAC §41.42(d)(1) (No change.)

(2) or the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the following role identifications in PEIMS, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:

Figure: 34 TAC §41.42(d)(2) (No change.)

(3) or, regardless of how the individual's time is reported in PEIMS, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in paragraph (1) or (2) of this subsection, as determined by the reporting entity or combination of entities.

(e) If TEA receives the report on or before the deadline and neither TRS nor TEA seeks verification of, investigates, or otherwise disputes information in the report upon initial review, subject to later adjustment if TRS determines that there are errors in the report, TRS will remit to the entity, subject to the availability of funds appropriated for this purpose:

(1) an amount equal to the number of full-time employees, reported by the entity for the reporting month divided by 12 and multiplied by \$500;

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month divided by 12 and multiplied by \$250.

(f) If a report is submitted after the deadline under this section, remittance to the reporting entity will be delayed by at least one month even if neither TEA nor TRS disputes or seeks verification of the numbers reported. In the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate monthly supplement to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section. Entities must continue to make the appropriate monthly distribution to eligible individuals for so long as such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution from another entity for employment that occurred earlier in the same month. Entities must submit proposed adjustments to previously reported numbers through September 30 of the fiscal year following the reporting month. TRS or TEA may make adjustments to previously reported numbers and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity, at any time after receipt of a report.

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 December 22, 2004.

TRD-200407472

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: February 25, 2005

For further information, please call: (512) 542-6115



# WITHDRAWN RULES

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

## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

#### SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

##### 16 TAC §315.106

The Texas Racing Commission has withdrawn from consideration the proposed amendments to §315.106 which appeared in

the December 17, 2004, issue of the *Texas Register* (29 TexReg 11520).

Filed with the Office of the Secretary of State on December 23, 2004.

TRD-200407495

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: December 23, 2004

For further information, please call: (512) 833-6699



# 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 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 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

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

##### 28 TAC §1.414

The Commissioner of Insurance adopts an amendment to §1.414 concerning assessment of maintenance taxes and fees for payment in the year 2005. The amended section is adopted without changes to the text as proposed in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10682).

The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 2005 which will provide the revenue necessary to fund appropriations made by the Legislature to fund regulation of the insurance industry in Texas by the department.

Section 1.414 sets rates of assessment and applies those rates to the gross premium receipts for the calendar year 2004, or some other basis designated by statute, to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. The department anticipates the adopted rates will produce revenue of \$34,124,137 to the state's general revenue fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 20A.33, 21.07-6 §21 and 23.08A, and §36.001. These articles provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage.

Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 20A.33 establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Article 21.07-6 §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on December 22, 2004.

TRD-200407465

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: January 11, 2005

Proposal publication date: November 19, 2004

For further information, please call: (512) 463-6327

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

##### 28 TAC §7.1012

The Commissioner of Insurance adopts an amendment to §7.1012 concerning assessments to cover the expenses of examining insurance companies. The amendment is adopted without changes to the text as proposed in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10693) and will not be republished.

The amendment is necessary to provide a rate of assessment for domestic and foreign insurance company examination expenses in 2005 which will provide the revenue necessary to fund the appropriations made by the Legislature.

Section 7.1012 provides the method and rates of assessment for examination expenses of foreign and domestic insurance companies. Rates of assessment are levied against and collected

from each domestic insurance company based on admitted assets and gross premium receipts for the 2004 calendar year, and from each foreign insurance company examined during the calendar year 2005 based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The department anticipates that the adopted rate will produce revenue of \$1,481,201 to the state's general revenue fund. The expenses and charges to be assessed are in addition to, and not in lieu of, any other charge which may be made under the law, including the Insurance Code Article 1.16.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code Article 1.16 and §36.001. Article 1.16(a) and (b) authorize the Commissioner of Insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code Articles 1.16, 1.17, and 1.18, in such amounts as the Commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the Commissioner by assessment. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## CHAPTER 25. INSURANCE PREMIUM FINANCE

### SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

#### 28 TAC §25.88

The Commissioner of Insurance adopts an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expense of insurance premium finance companies. The amendment is adopted without changes to the text as proposed in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10694) and will not be republished.

The amendment is necessary to adjust the rate of assessment so that it is sufficient to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies.

The department levies the rate of assessment established in the section to cover the 2005 fiscal year's general administrative expense and collect the assessment from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 2004 calendar year. The department estimates that \$113,710 will be collected for the state's general revenue fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code Articles 24.06(c), 24.09, and §36.001. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

##### 34 TAC §3.1205

The Comptroller of Public Accounts adopts new §3.1205, concerning delivery sales of cigarettes, with changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7928).

House Bill 3139, 78th Legislature, 2003, explains the tax responsibilities of persons who sell cigarettes to customers in Texas by means of the Internet, telephone, or mail order.

The American Cancer Society (ACS), Texas Division made several suggestions regarding the proposed new rule. The ACS

suggested that subsection (b)(2) include a requirement that the seller pay and remit sales taxes to the state within a specified time period from the date cigarettes are sold to a Texas buyer. The suggested change was made. The ACS also suggested the following changes: 1) change subsection (b)(7) so that a seller must verify the age and identity information provided by a customer in a certification statement against a commercially available database, and not allow a seller to accept a photocopy or other image of a government-issued identification bearing the date of birth of the customer as a valid proof of identification; 2) change subsection (c)(3) so that payment cannot be made by check, and require the address on a debit or credit card to be the same as the address the purchaser provided to the Internet seller; and 3) change subsection (d)(2) to restrict acceptance of delivery to the purchaser or the purchaser's designee, and deliver only to the purchaser's residence. These suggested changes were not made to the three subsections because the changes conflict with provisions in Health and Safety Code, Chapter 161.

This new section is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The new rule implements Health and Safety Code, Chapter 161, Subchapter R.

*§3.1205. Delivery Sales of Cigarettes (Health and Safety Code, Chapter 161, Subchapter R).*

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

(1) Delivery sale--A sale of cigarettes to a consumer in Texas in which:

(A) the purchaser submits the order for the sale:

(i) by telephone or any other method of voice transmission;

(ii) by mail or any other delivery service; or

(iii) through the Internet or another on-line service;

(B) the cigarettes are delivered by mail or another delivery service.

(C) A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(D) A sale of cigarettes is a delivery sale regardless of whether the seller is located outside or within Texas.

(2) Delivery service--A person, including the United States Postal Service (U.S. Post Office), who is engaged in the commercial delivery of letters, packages, or other containers.

(3) Shipping container--A container in which cigarettes are shipped in connection with a delivery sale.

(4) Shipping document--A bill of lading, airbill, United States Post Office form, or any other document used to document a delivery.

(5) Seller--A person, located outside or within Texas, who offers cigarettes for sale to the public by telephone order, mail order, or on the Internet.

(b) Seller requirements. A person who makes a delivery sale of cigarettes in Texas, must comply with the following requirements.

(1) Registration. Sellers located outside of Texas, who wish to make delivery sales to Texas customers must apply for and obtain a cigarette distributor permit from the comptroller's office before making a delivery sale in Texas or before shipping cigarettes into Texas in connection with a delivery sale. Sellers located in Texas, who wish to make delivery sales to Texas customers must obtain a cigarette retailer permit and a state sales tax permit from the comptroller's office before making a delivery sale in Texas.

(2) Collection and payment of taxes. The comptroller's office collects cigarette excise tax through the sale of cigarette tax stamps to permitted distributors. A seller located outside of Texas who has obtained a distributor permit is required to purchase and pay for tax stamps before the comptroller's office will ship the stamps to the seller. In addition, as provided in Tax Code, Chapter 151, a seller engaged in business in Texas is required to collect and remit to the comptroller's office sales tax on all cigarette sales made in Texas.

(3) Stamping requirements. A seller located outside of Texas must affix a Texas tax stamp to each package of cigarettes that is to be shipped or delivered to a purchaser in Texas before shipment. A Texas seller can purchase only stamped packages of cigarettes from distributors and wholesalers.

(4) Determine customer's age. Using the methods established in paragraphs (6) and (7) of this subsection, a seller must confirm the age of the prospective purchaser placing an order for cigarettes to be delivered by the U. S. Post Office or by a delivery service before the cigarettes can be mailed or delivered to a purchaser in Texas.

(5) Disclosure requirements. A seller must send a prospective purchaser a notice that includes a prominent and clearly legible statement that:

(A) state law prohibits cigarette sales to individuals younger than 18 years of age;

(B) sales of cigarettes are restricted to individuals who can provide verifiable proof of age;

(C) sales of cigarettes are taxable under Texas Tax Code, Chapter 154;

(D) the excise tax due on the cigarettes has been paid by the purchase of a tax stamp for each cigarette package; and

(E) that a tax stamp has been affixed to each cigarette package sold.

(6) Written certification. A seller is required to obtain from the prospective purchaser a written certification that includes:

(A) a reliable confirmation that the prospective purchaser is at least 18 years of age;

(B) a statement signed by the prospective purchaser certifying the prospective purchaser's address and date of birth;

(C) a confirmation that the prospective purchaser understands that signing another person's name to the certification is illegal, that state law prohibits the sale of cigarettes to, and the purchase of cigarettes by, an individual younger than 18 years of age; and

(D) a confirmation that the prospective purchaser wants to receive mailings from a tobacco company.

(7) Age verification. A seller must make a good faith effort to verify the information contained in the certification required under paragraph (6) of this subsection. A seller may compare the information against a commercially available database or obtain a photocopy or other image of a government-issued identification bearing a photograph and date of birth of the prospective purchaser.

(8) Disclosure notice. A seller must send to the prospective purchaser, by e-mail or other means, a notice that complies with the requirements in paragraph (5) of this subsection.

(c) Purchaser requirements. A person placing an order for cigarettes to be mailed or delivered must first:

- (1) provide the seller with proof of age;
- (2) provide the seller with a signed written statement that confirms:

(A) the purchaser's address and date of birth;

(B) the purchaser's permission for a tobacco company to send mailings to the purchaser;

(C) the purchaser's knowledge that signing another person's name to the written statement is illegal, and that state law prohibits the sales of cigarettes to, and the purchase of cigarettes by, an individual younger than 18 years of age; and

(3) pay for the cigarettes ordered by mail or over the Internet by check or by a credit or debit card that has been issued in the purchaser's name.

(d) Seller shipping requirements. Anyone who mails, ships, or delivers cigarettes into Texas in connection with a delivery sale order must:

(1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

(2) use a method of mailing or shipping that obligates the delivery service to require:

(A) for residential deliveries, the purchaser who placed the delivery sale order, or an adult who resides at the purchaser's address and who is at least 18 years of age, to sign to accept delivery of the shipping container and for the person accepting delivery to provide proof of identity and age by means of government-issued identification bearing a photograph;

(B) for non-residential deliveries, the purchaser who placed the delivery sale order, or a person who is at least 18 years of age, to sign to accept delivery of the shipping container and to provide proof of identity and age by means of a government-issued identification bearing a photograph;

(3) provide the delivery service with a written and signed statement that a Texas cigarette tax stamp has been affixed to each package of cigarettes included in the delivery sale. If the seller is located in Texas, the seller must also include a written and signed statement that the sales tax due on each package of cigarettes included in the delivery sale will be remitted to the comptroller's office.

(e) Seller reporting requirements. On or before the 10th day of each month, each seller who has made a delivery sale in Texas or shipped or delivered cigarettes into Texas in connection with a delivery sale during the previous month must file a *Texas Cigarette Delivery Sales Report* with the comptroller's office. This report must be completed and filed online. The report is available on the

comptroller's *Window on State Government* Web site at [www.window.state.tx.us](http://www.window.state.tx.us). The first report required under this subsection is due February 10, 2004, and will cover the period of September 1, 2003 through January 31, 2004. A seller who submits a monthly "Jenkins Act" report required by 15 U.S.C. Section 376, as amended, to the comptroller's office has complied with the monthly delivery sales reporting requirement and no further report is required.

(f) Violations and Penalties. A seller commits an offense if the seller violates a provision of the Health and Safety Code, Chapter 161, Subchapter R, or Tax Code, Chapter 154.

(1) Age violation. Making a delivery sale of cigarettes to a person younger than 18 years of age is a Class C misdemeanor for the first offense. A second and any subsequent offense is a Class B misdemeanor.

(2) Intentional violations. A seller who knowingly violates a provision of the Health and Safety Code, Chapter 161, Subchapter R, or knowingly submits a certification in another person's name commits a third degree felony.

(3) Non-payment of tax. A seller who fails to pay the cigarette tax or remit the sales tax must pay to the state a civil penalty in an amount equal to five times the amount of tax due. This penalty is in addition to penalties imposed under Tax Code, Chapter 154.

(4) Forfeiture of cigarettes and property. Packages of cigarettes that a seller sold or attempted to sell in a delivery sale that do not comply with the Health and Safety Code, Chapter 161, Subchapter R, may be forfeited to the state and may be destroyed. Any equipment, material, or other personal property on the premises of a seller who, with the intent to defraud the state, fails to comply with the provisions of the Health and Safety Code, Chapter 161, Subchapter R, may also be forfeited to the state.

(5) Tax code violations. If the comptroller finds that a seller violates Tax Code, Chapter 154, or a rule made pursuant to Chapter 154, the comptroller may impose a penalty of not more than \$2,000 for each violation per day and/or suspend or revoke a permit pursuant to Texas Tax Code, §154.1141.

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 December 21, 2004.

TRD-200407438

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

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**CHAPTER 5. FUNDS MANAGEMENT  
(FISCAL AFFAIRS)**

**SUBCHAPTER C. CLAIMS PROCESSING--  
TRAVEL VOUCHERS**

**34 TAC §5.22**

The Comptroller of Public Accounts adopts amendments to §5.22, concerning incorporation by reference: "State of Texas Travel Allowance Guide", without changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9821).

The amendments are necessary because of the issuance of a new "State of Texas Travel Allowance Guide" by the comptroller in October 2004. The new guide reflects changes made by the 78th legislature, regular session, 2003 to the Travel Regulations Act and to the travel provisions of the General Appropriations Act. The new guide also includes policy changes that are intended to promote efficiency and eliminate ambiguities concerning the travel of state officers and employees. Chapter 9 of the new guide lists the major differences between it and the previous guide. A copy of the new guide is available upon request from Claims Division, P.O. Box 13528, Austin, Texas 78711.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Government Code, §660.021, which requires the comptroller to adopt rules to administer the Travel Regulations Act and the travel provisions of the General Appropriations Act.

The amendments implement the Government Code, §403.248 and §§660.001-660.208. The amendments also implement the following provisions of the General Appropriations Act: Article III, Sections 7, 9, and 12; Article IV, Section 9(a); Article IX, §4.04(a), (e)-(f), §§5.01-5.07, §5.09, §6.21(b); Rider 4 in the appropriations to the Department of Banking; Rider 5 in the appropriations to the Cosmetology Commission; Rider 2 in the appropriations to the Department of Criminal Justice; Rider 4 in the appropriations to the Department of Housing and Community Affairs; Rider 2 in the appropriations to the University of Houston System Administration; Rider 2 in the appropriations to the Commission on Human Rights; Rider 7 in the appropriations to the Department of Insurance; Rider 7 in the appropriations to the Texas Lottery Commission; Rider 28 in the appropriations to the Department of Mental Health and Mental Retardation; Rider 2 in the appropriations to Midwestern State University; Rider 2 in the appropriations to the University of North Texas System Administration; Rider 16 in the appropriations to the Parks and Wildlife Department; Riders 18 and 20 in the appropriations to the Department of Public Safety; Rider 2 in the appropriations to the Racing Commission; Rider 2 in the appropriations to the Savings and Loan Department; Rider 9 in the appropriations to the secretary of state; Rider 2 in the appropriations to Stephen F. Austin State University; Rider 1 in the appropriations to the Texas River Compact Commissions; Rider 8 in the appropriations to the Teacher Retirement System; Rider 2 in the appropriations to The Texas A&M University System Administrative and General Offices; Rider 2 in the appropriations to Texas Southern University; Rider 3 in the appropriations to Texas State Technical College System Administration; Rider 2 in the appropriations to Board of Regents, Texas State University System Central Office; Rider 3 in the appropriations to The University of Texas System Administration; Rider 2 in the appropriations to the Texas Tech University System Administration; Rider 2 in the appropriations to Texas Woman's University; and Rider 23 in the appropriations to the Department of Transportation.

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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Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 3. TEXAS YOUTH COMMISSION

#### CHAPTER 95. YOUTH DISCIPLINE

##### SUBCHAPTER A. DISCIPLINARY

##### PRACTICES

##### 37 TAC §95.16

The Texas Youth Commission (the commission) adopts new §95.16, concerning Primary Intervention Program without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10227).

The justification for the new rule is to provide chronically disruptive youth with more target-specific behavioral intervention and enhanced opportunities to progress in the agency's Resocialization program. The new rule establishes a program which will function as a dorm-based intensive treatment intervention and disciplinary consequence for youth who repeatedly engage in non-violent behavior that disrupts facility operations or negatively impacts facility safety.

The commission received comments from Advocacy, Inc regarding the proposed new rule. The comments are summarized below, followed by the commission's response.

Comment: Regarding subsection (c)(3), a recommendation was made to add a psychologist or child psychiatrist to the Phase Assessment Team (PAT).

Response: The commission is not funded at a level which would allow for a psychologist or child psychiatrist to be present at every PAT. Every youth is assessed monthly, and to coordinate the presence of either of these professionals would require additional funding of psychiatric and psychological services. If a youth is seen by either of these professionals, there is a formal process by which feedback is provided to the PAT for incorporation in phase assessment and additional mental health adaptations in the behavioral phase assessment. There is also a process for PAT-identified youth suspected of having mental health conditions warranting additional assessment to be referred to psychology for screening/testing and then to psychiatry. However, given existing resources, there is a system in place to identify youth in need of formal assessment and increased clinical resources. The commission made no changes to the rule in response to the recommendation.

Comment: Regarding subsection (f)(4), the comment expressed concern that a psychologist, not a child psychiatrist, interviews

the youth prior to the implementation of the Primary Intervention Program. The comment also expressed the belief that it is clinically appropriate and in the best interest of the youth to be evaluated by a child psychiatrist, who would be able to prescribe psychotropic medications if needed.

Response: The commission's practice is to screen youth via psychological clinical interview with a Masters or Ph.D. psychologist prior to referral to the psychiatrist. Psychologists have expertise in psychometric testing which may be used for differential diagnosis and a current measure of intellectual/adaptive functioning as deemed clinically necessary. All referrals are tracked through the Director of Clinical Services and Special Services Committee to ensure accountability. All youth deemed in need of psychiatric services are referred to psychiatry through the Psychology Departments at each TYC facility. This process ensures the necessary screening and differential diagnosis to best utilize psychiatric services and ensure that all youth on ongoing psychiatric caseloads are seen in a timely manner, in addition to newly identified youth. Some youth may be seen by psychiatry and receive psychological individual counseling. Every TYC facility has a formal referral procedure for psychological and psychiatric services. Any youth deemed in need of assessment for placement on psychotropic medication is referred to the Psychology Department and assigned, by the Director of Clinical Services, for a clinical assessment by an MA or Ph.D psychologist and referred to psychiatrist. Only a psychiatrist can prescribe psychotropic medication to a youth. As deemed necessary, some youth receive both psychiatric medication and monitoring and psychological counseling. The commission made no changes to the rule in response to the comments.

The new rule is adopted under the Human Resources Code, §61.075, which provides the TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resources Code, §61.034.

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

Filed with the Office of the Secretary of State on December 22, 2004.

TRD-200407475

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: January 21, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 424-6301



### 37 TAC §95.17

The Texas Youth Commission (the commission) adopts the repeal of §95.17, concerning Behavior Management Program without changes to the proposal as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10229).

The justification for the repeal of this section is to allow for a significantly revised rule to be published in its place.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The adopted rule implements the Human Resources Code, §61.034.

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

Filed with the Office of the Secretary of State on December 27, 2004.

TRD-200407497

Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



### 37 TAC §95.17

The Texas Youth Commission (the commission) adopts new §95.17, concerning Behavior Management Program with changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10229). Changes to the proposed text consist of a revision to subsection (k)(2)(A). Clarification was added to reflect that a youth may not be transferred directly from a Behavior Management Program into Aggression Management Program. Upon a finding of true that a youth committed an AMP-eligible rule violation while assigned to a BMP, pursuant to §95.43 of this title the youth will be transferred to IDP while awaiting AMP admission. A minor revision occurred in subsection (i)(2)(A)(i); the word "least" was inadvertently omitted from the original proposal; therefore, the word was reinstated.

The justification for the new rule is to provide youth with enhanced opportunities to progress in the agency's Resocialization program and contribute to overall facility safety and order by reducing high-risk behaviors. The enhancement of the present program is designed to deliver target-specific treatment intervention in a highly secure environment, with a structured campus reintegration component.

The commission received comments from Advocacy, Inc. regarding the proposed new rule. The comments are summarized below, followed by the agency's response.

Comment: Regarding subsection (d)(1), a recommendation was made to include a child psychiatrist on the Special Services Panel.

Response: The commission disagrees with this recommendation. The Director of Clinical Services (DOCS), a licensed Ph.D. Psychologist (licensed by the State of Texas Examiners of Psychologists) chairs the Special Services Panel. Any youth for whom a Behavior Management Program (BMP) is determined prior to placement on a BMP to be clinically contraindicated would not be placed on a BMP. Psychological assessment prior to BMP placement ensures that appropriate clinical services and intervention are developed to best serve any youth having a psychiatric history. The commission believes that psychiatric



services are best utilized for psychiatric assessment and medication monitoring for those youth currently being seen or referred. Any psychiatric information is communicated by the psychiatrist to the DOCS or available to the DOCS via an electronic medical record. The commission made no changes to the rule in response to the recommendation.

Comment: Regarding subsection (f)(1)(A), the comment expressed concern that a psychologist, not a child psychiatrist, interviews the youth prior to the implementation of a BMP. The comment also expressed the belief that it is clinically appropriate and in the best interest of the youth to be evaluated by a child psychiatrist, who would be able to prescribe psychotropic medications if needed.

Response: The commission's practice is to screen youth via psychological clinical interview with a Masters or Ph.D. psychologist prior to referral to the psychiatrist. Psychologists have expertise in psychometric testing which may be used for differential diagnosis and a current measure of intellectual/adaptive functioning as deemed clinically necessary. All referrals are tracked through the Director of Clinical Services and Special Services Committee to ensure accountability. All youth deemed in need of psychiatric services are referred to psychiatry through the psychology departments at each facility. This process ensures the necessary screening and differential diagnosis to best utilize psychiatric services and ensure that all youth on ongoing psychiatric caseloads are seen in a timely manner, in addition to newly identified youth. Some youth may be seen by psychiatry and receive psychological individual counseling. Every facility has a formal referral procedure for psychological and psychiatric services. Any youth deemed in need of assessment for placement on psychotropic medication is referred to the Psychology Department and assigned, by the Director of Clinical Services, for a clinical assessment by an MA or PH.D psychologist. Only a psychiatrist can prescribe psychotropic medication to a youth. As deemed necessary, some youth receive both psychiatric medication and monitoring and psychological counseling. The commission made no changes to the rule in response to the comment.

Comment: Regarding subsection (g)(2)(B), the comment expresses confusion about the language used to describe the relationship between the Individualized Education Program (IEP) and the BMP. A BMP should be part of the child's IEP, and therefore one should not be in effect without the other. Advocacy, Inc. would strongly recommend changing the language about the BMP and IEP.

Response: The commission disagrees with the recommendation. The Behavioral Management Program (BMP) should not be confused with a behavior intervention plan (BIP) specified in 34 CFR 300.519-529 and alluded to in 34 CFR 300.346(a)(2). A BMP is a non-educational, corrections implemented progressive dorm reintegration program. The goal is to address the aggressive or chronically disruptive behavior where dorm intervention based programs have been unsuccessful.

In most cases, the behaviors leading to consideration of a BMP have not interfered with the youth's educational progress, including progress toward achieving a youth's IEP goals and objectives. However, in accordance with 34 CFR 300.346(a)(2), whenever a youth engages in behavior in the classroom that the teacher, administrator, or parent believes significantly impedes the youth's learning or the learning of others, the teacher, administrator, or parent, must request that an ARD committee meeting be convened to discuss the potential need for further educational

intervention(s), such as a BIP. It may be the ARD committee's decision to gather further evaluation data (either existing or new) as part of a Functional Behavioral Assessment (FBA), before determining the need for a BIP.

The convening of an ARD committee meeting to discuss the implications of disruptive or interfering behaviors on implementation of a youth's IEP has been designated at the commission as a Behavior Review ARD meeting. At this meeting the committee will specify, if appropriate, the need for the development of any positive behavioral interventions, strategies, and/or supports to address the behavior. These specified behavioral interventions, strategies, and supports constitute a BIP and would be incorporated into the youth's IEP.

A BIP is NOT to be confused with the commission's BMP that is developed and implemented accordance with §95.17. Whereas a BIP is developed by an ARD committee to address behavior concerns for a special education student only in the school setting, a BMP is developed, implemented, and monitored by correctional and treatment staff, with input from educational staff. In situations where a youth's behaviors lead to the development of an ARD-determined BIP, and a youth is also participating in the BMP, the youth's Phase Assessment Team (PAT) is required to coordinate information from the BMP and BIP to assess the youth's progress. The commission made no changes to the rule in response to the recommendation.

Comment: Regarding subsection (g)(5), the comment expressed a desire to see more information regarding dorm caseworkers' responsibilities and qualifications, and a recommendation that the qualifications of the position be at least LPC or MSW.

Response: The commission strives to recruit qualified, credentialed casework professionals; however, the barriers due to the rural locations of the commission facilities adds a challenge to this commitment. The majority of caseworkers, 68%, have a BA degree in social science. All caseworkers receive training in the Resocialization Program (44 hours), and ongoing case management and core intervention group supervision by their Program Administrator. The caseworker conducts Resocialization Core Groups, individual counseling, family contacts (including family therapy), case management, phase assessment, and may participate in behavioral intervention (behavior groups). The commission made no changes to the rule in response to the recommendation.

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resources Code, §61.034.

*§95.17. Behavior Management Program.*

(a) Purpose. The Behavior Management Program (BMP) functions as a disciplinary consequence and a means for delivering intensive treatment interventions in a highly secure and structured environment for youth who have engaged in certain high-risk behaviors. This rule sets forth eligibility criteria, program completion requirements, and services to be provided to youth in the program.

(b) Authorized Facilities. The facilities authorized to administer the BMP are:

(1) Texas Youth Commission (TYC)-operated high restriction facilities; and

(2) residential facilities operating under contract with TYC which are approved by the TYC executive director or designee to administer a BMP.

(c) Applicability.

(1) The BMP is administered in the security unit except as noted herein. All standard security unit requirements and services as set forth in §97.36 of this title (relating to Standard Security Unit Program Requirements), unless otherwise noted herein, shall be observed while the youth is in the security unit.

(2) This rule does not apply to:

(A) the use of the same or adjacent space when used specifically as security intake. See §97.37 of this title (relating to Security Intake);

(B) the use of the same or adjacent space when used specifically as a security program. See §97.40 of this title (relating to Security Program);

(C) the use of the same or adjacent space when used specifically as detention in a TYC institution. See §97.43 of this title (relating to Institution Detention Program);

(D) the use of the same or adjacent space when used specifically as protective custody. See §97.45 of this title (relating to Protective Custody);

(E) the use of same or adjacent space when used specifically as temporary admission. See §85.41 of this title (relating to Temporary Admission Awaiting Transportation);

(F) the Aggression Management Program. See §95.21 of this title (relating to Aggression Management Program).

(d) Explanation of Terms Used.

(1) Special Services Panel--a panel that reviews the recommendation for a youth's admission to BMP. At a minimum, the panel includes a caseworker and a program administrator who are not responsible for direct supervision of the youth, and the director of clinical services (DOCS).

(2) Progress Review Team--a team which assesses youth progress through the stages of the BMP. At a minimum, the team includes the director of security, a staff psychologist, the security caseworker, the youth's dorm program administrator, and a representative from education.

(3) Individual Behavior Management Plan (IBMP)--a plan developed for each youth placed in the BMP which consists of objectives that address the behavior or cluster of behaviors that prevent the youth from successfully participating in regular programming.

(4) Security Unit--see definition in §97.36 of this title.

(5) Security Program--see program description in §97.40 of this title.

(6) Core Group--a daily meeting conducted by a caseworker with the youth on a dorm to help the youth develop an understanding of criminal behavior and thinking.

(7) Category I/II Rule Violations--see explanation in §95.3 of this title (relating to Rules of Conduct).

(8) Primary Intervention Program (PIP)--see program description in §95.16 of this title (relating to Primary Intervention Program).

(9) Admission, Review, and Dismissal (ARD) committee--a committee that makes decisions on educational matters relating to special education-eligible students.

(10) Individualized Education Program (IEP)--the program of special education and related services developed by a student's ARD committee.

(11) Institution Detention Program (IDP)--see program description in §97.43 of this title.

(e) Program Eligibility. A youth who knowingly engages in, aids, or abets someone else to engage in one or more of the following high risk behaviors is eligible for placement in a BMP:

(1) willful destruction of property of \$50 or more;

(2) assault resulting in bodily injury;

(3) escape or attempted escape as defined in §95.3 of this title;

(4) fleeing apprehension which results in a significant disruption of campus operations;

(5) riotous conduct as defined in §95.3 of this title;

(6) sexual assault, aggravated sexual assault, or inappropriate sexual contact other than just kissing;

(7) possessing any item defined as a weapon in the Penal Code or threatening others with use of an object which could be used as a weapon;

(8) threatening imminent bodily injury as defined in §95.3 of this title;

(9) unauthorized possession or use of a controlled substance or marijuana;

(10) self-harm or threatening self-harm, which has been clinically assessed by a mental health professional as not motivated by mental illness pursuant to assessment procedures as set forth in §91.88 of this title (relating to Suicide Alert for Secure Programs);

(11) chronic disruptive behavior, as demonstrated by:

(A) five (5) or more admissions or extensions to the security program in a 30-day period, or ten (10) or more admissions or extensions to the security program in a three (3)-month period; and

(B) release within the previous six (6) months from a PIP or BMP; or

(12) behavior which is found in a due process hearing to be eligible for placement in the AMP pursuant to §95.21 of this title and subsequently denied admission to AMP.

(f) Admission Decision.

(1) Except as described in paragraph (2) of this subsection, the following is the process by which a determination shall be made to place a youth in a BMP.

(A) Upon a recommendation by staff for placement in a BMP, a psychologist shall interview the youth and document an assessment of the motivation for the behavior and the mental status of the youth to determine whether any therapeutic contraindications for admission exist.

(B) The assistant superintendent shall approve the request to hold a due process hearing in order to pursue placement in a BMP upon a determination by the Special Services Panel that:

(i) the youth poses a continuing risk for identified admitting behavior(s);

(ii) less restrictive methods of documented intervention have been attempted when appropriate; and

(iii) the mental status of the youth has been assessed and there are no therapeutic contraindications for admission to the BMP.

(C) A due process hearing shall be held in accordance with procedures set forth in §95.51 of this title (relating to Level I Hearing Procedure) or §95.55 of this title (relating to Level II Hearing Procedure). If there is a finding of true with no extenuating circumstances that the youth engaged in one of the behavioral criteria listed in subsection (e) of this section, the youth shall be admitted to the BMP.

(2) For youth in IDP that were denied admission to AMP, the superintendent or assistant superintendent shall make a determination whether or not to admit the youth to the BMP.

(g) Program Requirements.

(1) The BMP shall not exceed 90 days in duration.

(2) Special education services are provided in accordance with ARD committee decisions.

(A) If a determination is made by the principal that the youth's IEP cannot be implemented while the youth is on a BMP, an ARD committee meeting shall be held to develop an appropriate IEP to be implemented while the youth is in the security unit on a BMP.

(B) The ARD committee shall also determine whether or not the youth's IEP in effect prior to the BMP will be reinstated upon the youth's release from the BMP. If a determination is made not to reinstate the prior IEP, the committee shall reconvene upon the youth's release from BMP to develop a new IEP.

(3) An IBMP shall be developed for each youth.

(A) The plan will be developed by the youth's caseworker, in consultation with the security caseworker, psychologist, and education staff.

(B) The plan will consist of objectives that address the specific target behavior or cluster of behaviors that led to admission to the BMP, taking into consideration the psychologist's recommendations to address the motivation for the behavior.

(C) The plan must involve strategies for intervention and prevention.

(D) The plan must include a component which addresses transition to the general campus population.

(E) Objectives for release shall be clearly written in the IBMP.

(F) The plan shall be explained to the youth and he/she will sign the plan in acknowledgment.

(4) The IBMP and youth's progress with regard to target behaviors is reviewed and evaluated every seven (7) days by the Progress Review Team.

(5) The youth's dorm caseworker shall provide at least 45 minutes of individual counseling with the youth every 30 days.

(6) Youth shall spend time out of the security unit as described herein. Participation in campus programming is contingent upon compliance with programming. If a youth is non-compliant with

programming, the security caseworker will determine appropriate programming based on the youth's conduct and level of risk, pending the weekly Progress Review Team assessment.

(h) Stage Determination for Youth Transferred from IDP while Awaiting AMP Admission.

(1) Upon a determination by the superintendent or assistant superintendent to place the youth on a BMP, the Progress Review Team will evaluate the youth's behavior and progress toward meeting goals and objectives while assigned to the IDP and determine the appropriate BMP stage at which the youth will begin progression through the BMP, not to exceed Stage 3.

(2) The number of days spent in IDP following the date of the youth's due process hearing will be credited toward the 90-day maximum in the BMP.

(i) Progress Through Program Stages. The program consists of five (5) stages. Movement through each stage is based on successful completion of performance objectives.

(1) Stage 1. Stage 1 shall last a minimum of seven (7) days.

(A) Services and Activities.

(i) At least five and one-half (5 1/2) hours daily of academic services will be provided in the security unit.

(ii) Daily counseling and progress reviews with the designated security caseworker, with a minimum of one weekly 20-minute session.

(iii) Weekly meetings by the Progress Review Team to discuss progress on IBMP objectives.

(iv) Target-specific materials (e.g., anger management, gang intervention strategies) and weekly opportunities to review and discuss material with staff.

(v) Weekly mental health status exams by a psychologist.

(B) Stage 1 Completion Criteria.

(i) Observe standardized security unit rules with no Category I rule violations and no more than three (3) Category II rule violations within the seven-day review period.

(ii) Meet short-term IBMP objectives and complete verbal and written assignments.

(2) Stage 2. Stage 2 shall last a minimum of seven (7) days.

(A) Services and Activities.

(i) At least five and one-half (5 1/2) hours daily of academic services will be provided in the security unit.

(ii) Five (5) hours per week of behavior group on the dorm, provided by appropriate staff.

(iii) Daily counseling and progress reviews with the designated security caseworker, with a minimum of one weekly 20-minute session.

(iv) Weekly meetings by the Progress Review Team to discuss progress on IBMP objectives.

(v) Target-specific materials (e.g., anger management, gang intervention strategies) and weekly opportunities to review and discuss material with staff.

(vi) Weekly mental health status exams by a psychologist.

(B) Stage 2 Completion Criteria.

(i) Observe standardized security unit rules with no Category I rule violations and no more than two (2) Category II rule violations within the seven-day review period.

(ii) Meet short-term IBMP objectives and complete verbal and written assignments.

(3) Stage 3. Stage 3 shall last a minimum of seven (7) days.

(A) Services and Activities.

(i) At least five and one-half (5 1/2) hours daily of academic services will be provided, consisting of at least four (4) hours on campus.

(ii) Five (5) hours per week of behavior group on the dorm, provided by appropriate staff.

(iii) Daily counseling and progress reviews with the designated security caseworker, with a minimum of one weekly 20-minute session.

(iv) Weekly meetings by the Progress Review Team to discuss progress on IBMP objectives.

(v) Target-specific materials (e.g., anger management, gang intervention strategies) and weekly opportunities to review and discuss material with staff.

(B) Stage 3 Completion Criteria.

(i) Observe standardized security unit rules with no Category I rule violations and no more than two (2) Category II rule violations within the seven-day review period.

(ii) Meet short-term IBMP objectives and complete verbal and written assignments.

(4) Stage 4. Stage 4 shall last a minimum of seven (7) days.

(A) Services and Activities.

(i) At least five and one-half (5 1/2) hours daily of academic services will be provided on campus.

(ii) Participation in youth's daily dorm program.

(iii) Weekly meetings by the Progress Review Team and youth's dorm caseworker to discuss progress on IBMP objectives.

(iv) Target-specific materials (e.g., anger management, gang intervention strategies) and weekly opportunities to review and discuss material with staff.

(B) Stage 4 Completion Criteria.

(i) Observe standardized security unit rules with no Category I rule violations and no more than one (1) Category II rule violation within the seven-day review period.

(ii) Meet short-term IBMP objectives and complete verbal and written assignments.

(5) Stage 5. Stage 5 shall not exceed 30 consecutive days in duration. Youth are released from the security unit immediately upon completion of Stage 4 and begin participating in a Primary Intervention Program (PIP) on an assigned general population dorm. Youth may earn phases in all areas of Resocialization while on this stage.

(A) Services and Activities. See §95.16 of this title for program components.

(B) Stage 5 Completion Criteria.

(i) Completion of 30 consecutive days with no Category I rule violations, no more than one (1) Category II rule violation in any seven-day review period, no security referrals in any seven-day review period and compliance with short term IBMP objectives; or

(ii) Completion of 90th day from initial admission to the BMP.

(j) Progress Reviews.

(1) For Stages 1 - 4. The Progress Review Team, in consultation with the youth's dorm caseworker when appropriate, reviews the youth's IBMP and evaluates the completion of stage requirements and the effectiveness of treatment strategies every seven (7) days.

(A) Stage Promotion. Youth who meet the established stage completion criteria must be promoted to the next stage.

(B) Stage Retention/Demotion.

(i) Youth who fail to meet established stage completion criteria may be retained on the same stage or demoted one or more stages.

(ii) The Progress Review Team shall make a determination whether to retain or demote based on the level of youth non-compliance with completion criteria.

(iii) Demotions of more than one stage may be administered only upon a youth's commission of a Category I rule violation during the review period.

(iv) A stage demotion requires a Level III due process hearing. See §95.57 of this title (relating to Level III Hearing Procedure).

(2) For Stage 5. The Phase Assessment Team (PAT), with initial consultation with the security caseworker, reviews the youth's PIP plan objectives and behavior on a weekly basis in accordance with §95.16 of this title.

(A) Stage Maintenance. Youth who meet the following requirements in each seven-day review are maintained on Stage 5 until completion of the program:

(i) comply with PIP plan objectives;

(ii) commit no Category I rule violations and no more than one (1) Category II rule violation; and

(iii) no security referrals.

(B) Stage Demotion.

(i) Youth who fail to meet stage maintenance requirements may be demoted one or more stages.

(ii) The PAT shall make a determination whether to demote based on the level of youth non-compliance with stage maintenance criteria.

(iii) Demotions of more than one stage may be administered only upon a youth's commission of a Category I rule violation during the review period.

(iv) A stage demotion requires a Level III due process hearing. See §95.57 of this title.

(k) Release from BMP.

(1) Program Completion. A youth has completed the program and shall be returned to regular programming when one of the following occurs:

(A) the youth has completed Stage 5 of the BMP; or

(B) the youth has completed 90 days from the date of initial admission to the BMP.

(2) Release without Program Completion. A youth shall be released from BMP when one of the following occurs prior to program completion:

(A) the youth is transferred to the AMP pursuant to §95.21 of this title;

(B) a determination by the superintendent or designee that the program has failed to be implemented as designed for reasons other than non-compliance of the youth;

(C) a decision by the superintendent or designee to release the youth to the general population based on:

(i) population concerns in the security unit; or

(ii) a recommendation by a mental health professional due to the youth's mental health condition.

(D) a decision by the receiving superintendent or designee not to continue the BMP after transfer of the youth to another high restriction facility; or

(E) placement on a new BMP upon a finding of true in a Level II hearing that the youth committed a rule violation listed in subsection (e) of this section while assigned to a BMP.

(l) Right to Appeal. The youth shall be notified in writing of his/her right to appeal the BMP placement to the executive director. See §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

(m) Family Notification. A youth's parents or guardian shall be notified within 24 hours of the hearing of the youth's admission to the BMP if allowable under §87.5 of this title (relating to Family Involvement).

(n) Impact on Length of Stay.

(1) A placement in a BMP will not impact a youth's classification minimum length of stay or any disciplinary minimum length of stay.

(2) Pursuant to a Level II hearing, certain youth who are assessed a disposition under this rule may also be assigned a disciplinary minimum length of stay disposition, but only if criteria have been met and if the youth was given notice of the specific disposition request. All policy and program requirements of §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence) will apply to the assignment of such.

(3) Youth are not eligible to earn Resocialization phases while on Stages 1- 4 of the BMP.

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 December 22, 2004.

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Dwight Harris  
Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



### 37 TAC §95.21

The Texas Youth Commission (the commission) adopts an amendment to §95.21, concerning Aggression Management Program without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10233).

The justification for amending the section is to provide appropriate services for youth pending admission to the Aggression Management Program with serious high-risk behaviors.

The amendment will allow for youth pending admission to the Aggression Management Program (AMP) with an assigned maximum length of stay will remain or be placed in the Institution Detention Program (IDP) at the youth's current placement. If the youth completes the maximum length of stay in the IDP prior to admission in AMP, the youth shall not be admitted to AMP.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the commission with the authority to determine services for the youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The adopted rule implements the Human Resources Code, §61.034.

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

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## SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

### 37 TAC §95.57

The Texas Youth Commission (the commission) adopts an amendment to §95.57, concerning Level III Hearing Procedure without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10236).

The justification for amending the section is afford a due process hearing for admission to the Primary Intervention Program (PIP) or a stage demotion in the Behavior Management Program (BMP) for disciplinary consequences.

The amendment will require a Level III hearing for admission to the PIP or a stage demotion in the BMP.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the commission with the authority to determine services it believes conducive to acceptable behavior.

The adopted rule implements the Human Resources Code, §61.034.

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

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## CHAPTER 97. SECURITY AND CONTROL SUBCHAPTER A. SECURITY AND CONTROL

### 37 TAC §97.36

The Texas Youth Commission (the commission) adopts new §97.36, concerning Standard Security Unit Program Requirements, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10237).

The justification for the new section is to provide standardized services to promote a safe environment for the youth and staff at the commission's institutions.

The new section will provide standard service delivery, contact, and security requirements for all programs administered through the commission-operated security unit.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, §61.045, which provides the commission with the authority to take appropriate measures to ensure the safety of the youth and staff.

The adopted section implements the Human Resources Code, §61.034.

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

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### 37 TAC §97.37

The Texas Youth Commission (the commission) adopts an amendment to §97.37, concerning Security Intake, with changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10239).

The justification for amending the section allows for a new reference regarding Standard Security Unit Program requirements to be incorporated in this rule.

The amendment will reference a new §97.36, regarding Standard Security Unit Program requirements, which is simultaneously adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The adopted amendment implements the Human Resources Code, §61.034.

§97.37. *Security Intake.*

(a) Purpose.

(1) The purpose of this rule is to establish criteria and procedure for segregating youth from the general population under certain circumstances. Each Texas Youth Commission (TYC) operated institution or secure contract program provides for segregation programs. Placement in a segregation program may be imposed only in specific situations for specified periods of time. Youth who may be eligible for a placement in a segregation program may be initially referred to the security intake. Such youth are placed into a secure setting that is controlled exclusively by staff.

(2) If a youth from the community is referred to the institution for placement in protective custody, and the youth arrives without a formal assessment by a mental health professional (MHP), that youth will be placed in security intake, pending face-to-face assessment.

(b) Applicability.

(1) This rule does not apply to:

(A) the use of the same or adjacent space when used specifically as a Security Program. See §97.40 of this title (relating to Security Program);

(B) the use of the same or adjacent space when used specifically as detention in lieu-of-county detention or specifically as institution detention. See §97.43 of this title (relating to Institution Detention Program);

(C) the use of the same or adjacent space when used specifically as a disciplinary segregation program. See §95.17 of this title (relating to Behavior Management Program);

(D) the use of the same or adjacent space when used specifically as protective custody. See §97.45 of this title (relating to Protective Custody);

(E) the use of the same or adjacent space when used specifically as temporary admission. See §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(F) the Aggression Management Program (AMP). See §95.21 of this title (relating to Aggression Management Program).

(2) Security intake is administered in the security unit. All standard security unit requirements and services as set forth in §97.36 of this title (relating to Standard Security Unit Program Requirements), unless otherwise noted herein, shall be observed while the youth is in the security unit.

(c) Referral and Admission Criteria. A youth may be admitted to security intake if there is reason to believe, based on overt acts by the youth, and/or under the following circumstances:

(1) the youth is a serious and continuing escape risk; or

(2) the youth is a serious and immediate physical danger to others and staff cannot protect others except by referring the youth to security intake; or

(3) the youth engages in or verbalizes overt or non-lethal suicide behavior as defined in §91.87 of this title (relating to Suicide Alert Explanation of Terms); or

(4) confinement is necessary to prevent imminent and substantial destruction of property; or

(5) confinement is necessary to control behavior that creates disruption of the youth's current program; or

(6) the youth requests confinement, unless self-referrals have been disallowed by the superintendent or designee; or

(7) staff requests detention for a youth.

(d) Referral and Admission Process.

(1) A youth may be referred to the security intake by staff or at the youth's own request.

(2) A youth may be held in security intake on referral for up to one (1) hour.

(3) The superintendent or designee may extend the one (1)-hour time limit up to one (1) additional hour, if requested and necessary, in order to make a proper decision.

(4) Within one (1) hour (or two (2) hours if an extension has been granted) of the youth's arrival at security intake, the designated staff shall determine whether criteria for admission have been met. If admission criteria are met, designated staff may admit youth to the security intake for up to 24 hours.

(5) Designated staff include the superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, psychologist, caseworker, or designated juvenile correctional officer (JCO) VI trained in the security intake policy and procedure to admit youth to the security intake program. On the late night shift, a JCO V trained in the security intake admission policy and procedure may admit a youth to security intake. The director of security may not admit a youth to security intake.

(6) If a youth is referred to security intake for danger of injury to self, this policy needs to be read in conjunction with §91.88 of this title (relating to Suicide Alert for Secure Programs). Security staff shall immediately contact an MHP and a trained designated staff who must initiate a suicide risk screening within one (1) hour from referral.

(7) The director of security or designee will review all admission decisions within one (1) working day to determine if admission criteria have been met. If the criteria are not met or policy and procedures are not followed, the youth will be released from the security unit. The director of security or designee shall not have been involved in the admission decision.

(8) A youth may appeal the admission decision to the security intake through the youth complaint system as defined in §93.31 of this title (relating to Complaint Resolution System).

(e) Security Intake Termination/Other Segregation Programs.

(1) Within 24 hours of admission to security intake, a youth shall be:

(A) released to the general population; or

(B) admitted to one of the following programs:

(i) Security Program--if it is determined that there are reasonable grounds to believe one or more of the security program admission criteria is occurring. See §97.40 of this title;

(ii) Institution Detention Program--if it is determined that there are reasonable grounds to believe one or more of the institution detention admission criteria is occurring. See §97.43 of this title;

(iii) Protective Custody--if it is determined by an MHP, following a face-to-face assessment, that protective custody admission criteria are occurring. See §97.45 of this title.

(2) If a youth is admitted to security intake for any reason other than danger of injury to self, the youth may be released by the director of security or any designated staff authorized to admit youth in this policy.

(3) Youth admitted to security intake for danger of injury to self may only be released from security intake to the general population under two circumstances:

(A) by an MHP in accordance with §91.88 of this title; or

(B) if an MHP does not assess the youth within 24 hours of admission to intake. The superintendent or assistant superintendent will be contacted immediately and the youth will be returned to the general population under one-to-one (1:1) observation until an MHP conducts a face-to-face suicide risk assessment.

(f) Restrictions.

(1) Segregation shall not be used for retribution at any time.

(2) No minimum length of time in security intake shall be imposed.

(3) The superintendent or assistant superintendent may place moratoriums on self-referrals to security intake for individual dormitories (such as during dorm shutdown), as well as campus-wide when appropriate.

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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### 37 TAC §97.40

The Texas Youth Commission (the commission) adopts an amendment to §97.40, concerning Security Program, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10240).

The justification for amending the section allows for a new reference regarding Standard Security Unit Program requirements to be incorporated in this rule.

The amendment will reference a new §97.36, regarding Standard Security Unit Program requirements, which is simultaneously adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The adopted amendment implements the Human Resources Code, §61.034.

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

Filed with the Office of the Secretary of State on December 22, 2004.

TRD-200407485

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: January 21, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 424-6301



### 37 TAC §97.43

The Texas Youth Commission (the commission) adopts an amendment to §97.43, concerning Institution Detention Program with changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10241).

The justification for amending the section allows for a new reference regarding Standard Security Unit Program requirements to be incorporated in this rule.

The amendment will reference a new §97.36, regarding Standard Security Unit Program requirements, which is simultaneously adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034 and §61.075, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function and to determine treatment and liberty under the supervision when behavior is conducive.

The adopted amendment implements the Human Resources Code, §61.034.

#### §97.43. *Institution Detention Program.*

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

#### (b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) The IDP is administered in the security unit except as noted herein. All standard security unit requirements and services as set forth in §97.36 of this title (relating to Standard Security Unit Program Requirements), unless otherwise noted herein, shall be observed while the youth is in the security unit.

#### (3) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a Security Program. See §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as protective custody. See §97.45 of this title (relating to Protective Custody);

(F) the use of the same or adjacent space when used specifically as temporary admission. See §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(G) the Aggression Management Program (AMP). See §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing--the TYC Level IV hearing required by this policy.

(d) Criteria For Placement In An Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria For Detention Up To 72 Hours.



(A) A youth assigned to a TYC-operated institution or secure contract program may be admitted to the IDP (for up to 72 hours) if:

(i) the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(I) there are reasonable grounds to believe the youth has committed a violation; and

(II) one of the following applies:

(-a-) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(-b-) the youth is likely to interfere with the hearing or trial process; or

(-c-) the youth represents a danger to others; or

(-d-) the youth has escaped or attempted escape as defined in §95.3 of this title (relating to Rules of Conduct).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances and all detention criteria must have been met as defined in §97.41 of this title.

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in §93.31 of this title (relating to Complaint Resolution System).

### (3) Admission Criteria For Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC-operated institution or secure contract program may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC-operated institution or secure contract program may be detained in a TYC-operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in §97.41 of this title have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven (7) days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a Level IV hearing when the youth is waiting for transportation:

(i) to the Texas Department of Criminal Justice--Institution Division (TDCJ-ID) following a transfer hearing; or

(ii) to a different placement following a Level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have the superintendent's approval.

(e) Requirements To Hold Youth In IDP Pending Aggression Management Program Admission Approval.

(1) If a youth is found in a Level I or II hearing to have engaged in behavior which meets eligibility criteria for transfer to the Aggression Management Program (AMP), as set forth in §95.21 of this title and is awaiting an admission decision, an available bed, or transportation to the program, the youth shall remain, or be placed, in IDP.

(2) A youth pending AMP admission approval must be released from IDP:

(A) not later than the 30th day following the date of the Level I or II hearing; or

(B) the third working day after AMP admission is denied.

(3) If the youth is not released to AMP prior to the 30th day following the date of the youth's Level I or II hearing, the youth will be released to the Behavior Management Program (BMP) or to the general population as outlined in subsection (g)(2) of this rule.

(f) Detention Review Hearings Required For Any Youth Held In An Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours, an initial detention review hearing (Level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten (10) working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria. See §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for:

(A) youth detained pending transportation as defined in this policy; or

(B) sentenced offenders awaiting a transfer hearing to TDCJ-ID as defined in §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders), if the hearing date is set to take place within a reasonable period of time from the date of detention; or

(C) youth detained pending a decision to admit the youth to, or bed availability in, the AMP.

(5) Institution or a designated community staff will hold the required Level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a Level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the Level IV hearing.

(g) Release From Institution Detention.

(1) For Youth Not Pending AMP Admission Approval.

(A) Release from IDP is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing.

(B) If the youth is pending transportation, the youth is released from IDP upon transport.

(2) For Youth Pending AMP Admission Approval.

(A) If AMP staff approve admission to AMP, the youth will be released from IDP upon transport.

(B) If the youth is not released to AMP prior to the 30th day following the date of the youth's Level I or II hearing, the youth will be released to BMP pursuant to subsection (f)(2) of §95.17 of this title or to the general population based on the decision of the superintendent or assistant superintendent, if:

(i) a decision is made to admit the youth to AMP pending bed availability, and no beds become available;

(ii) a decision is made not to admit the youth to AMP; or

(iii) if no admission decision is made.

(h) Service Delivery In IDP.

(1) Youth assigned to the IDP will receive all standard security program services as set forth in §97.36 of this title.

(2) Youth pending AMP admission approval shall be provided the following additional services:

(A) a minimum of one 20-minute counseling session per week by the security caseworker;

(B) weekly objectives and goals focused on target-specific behaviors, developed by the security caseworker in consultation with the youth's dorm caseworker; and

(C) weekly meetings with a team consisting of the security caseworker, the youth's dorm program administrator, and a psychologist to discuss the youth's progress towards weekly goals.

(D) weekly mental health status exams by a psychologist.

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 December 22, 2004.

TRD-200407486

Dwight Harris  
Executive Director  
Texas Youth Commission  
Effective date: January 21, 2005  
Proposal publication date: November 5, 2004  
For further information, please call: (512) 424-6301



### 37 TAC §97.45

The Texas Youth Commission (the commission) adopts an amendment to §97.45, concerning Protective Custody, without changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10243).

The justification for amending the section allows for a new reference regarding Standard Security Unit Program requirements to be incorporated in this rule.

The amendment will reference a new §97.36, regarding Standard Security Unit Program requirements, which is simultaneously adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The adopted amendment implements the Human Resources Code, §61.034.

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

Filed with the Office of the Secretary of State on December 22, 2004.

TRD-200407487  
Dwight Harris  
Executive Director  
Texas Youth Commission  
Effective date: January 21, 2005  
Proposal publication date: November 5, 2004  
For further information, please call: (512) 424-6301



# 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.

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## Adopted Rule Review

State Pension Review Board

### Title 40, Part 17

The State Pension Review Board re-adopts Chapter 604 in accordance with Texas Government Code §2001.039.

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriation Act, §9-10, 76th Legislature, and Texas Government Code, §2001.039 as added by Senate Bill 178, and pursuant to the notice of intention to review published in the *Texas Register* (29 TexReg 8901) the State Pension Review Board has conducted a thorough review of the rule in Chapter 604 as to whether the reasons for adopting or re-adopting this rule continue to exist.

No comments were received regarding the review of this rule.

As a result of the review, the Board has determined that the reason for adoption of this rule continues to exist. Therefore the State Pension Review Board re-adopts Chapter 604.

TRD-200407498

Lynda Baker

Executive Assistant

State Pension Review Board

Filed: December 27, 2004



# 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 Building and Procurement Commission

Request for Proposal

RFP Number: #303-5-10571

Opening Date/Time: January 19, 2005 at 3:00 PM

Description: Lease requirement for approximately 822 sq. ft. of Office Space plus 400 sq. ft. of Garage in Athens, Henderson County, Texas

Agency: Texas Parks and Wildlife Department (TPWD)

Purchaser/Contact: Kenneth Ming (512) 463-2743  
or through the Electronic State Business Daily at:  
[http://esbd.tnpc.state.tx.us/1380/bid\\_show.cfm?bidid=56994](http://esbd.tnpc.state.tx.us/1380/bid_show.cfm?bidid=56994)

TRD-200407507

Mark Gentle

Legal Counsel

Texas Building and Procurement Commission

Filed: December 28, 2004



## Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 3, 2005 - January 9, 2005 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of January 3, 2005 - January 9, 2005 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of January 1, 2005 - January 31, 2005 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of January 1, 2005 - January 31, 2005 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200407501

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 27, 2004



## Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Ricky's Enterprises, Inc. dba Tony's Express Market, Docket No. 2002-0830-PST-E on 12/08/2004 assessing \$44,000 in administrative penalties with \$42,000 deferred.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at Attorney (512) 239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tubular Rental, Inc., Docket No. 1999-1137-IHW-E on 12/08/2004 assessing \$19,000 in administrative penalties with \$18,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camie Crisp dba Camie's Tire Company, Docket No. 2002-0588-MSW-E on 12/08/2004 assessing \$10,000 in administrative penalties with \$9,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rodolfo Galvan and Dominga Galvan, Docket No. 2003-0092-MSW-E on 12/08/2004 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ralston Acres Water System Corporation, Docket No. 2003-1219-PWS-E on 12/08/2004 assessing \$3,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Craig Adams dba Hardy Stop (Formerly Hopper Food Corner), Docket No. 2003-1388-PST-E on 12/08/2004 assessing \$13,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tipton Service, Inc., Docket No. 2003-0846-PST-E on 12/08/2004 assessing \$3,150 in administrative penalties with \$2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jan Enterprises, Inc. dba Nikus Lucky Lady, Docket No. 2003-0851-PST-E on 12/08/2004 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anna Plaza, Incorporated dba Coyote Den, Docket No. 2003-1054-PST-E on 12/08/2004 assessing \$28,350 in administrative penalties with \$27,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roscoe, Docket No. 2003-0293-PWS-E on 12/08/2004 assessing \$3,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin de Leon, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inland Paperboard and Packaging, Inc., Docket No. 2003-1431-AIR-E on 12/08/2004 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tippins, Alma E, Docket No. 2004-0014-OSI-E on 12/08/2004 assessing \$520 in administrative penalties with \$104 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sam Song dba Sam Song Motors, Docket No. 2003-0373-AIR-E on 12/08/2004 assessing \$575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodmark Utilities, Inc., Docket No. 2003-0640-MWD-E on 12/08/2004 assessing \$4,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ashley Kever, Staff Attorney at (512) 239-2987, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ken R. Sloan dba Tri-County Septic, Docket No. 2004-0039-OSI-E on 12/08/2004 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carroll Pratt dba Whispering Pines Mobile Home Park, Docket No. 2003-0672-PWS-E on 12/08/2004 assessing \$863 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Firestone Polymers, LLC, Docket No. 2003-1480-AIR-E on 12/08/2004 assessing \$74,183 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Texas Thermowell, Inc., Docket No. 2003-1484-WQ-E on 12/08/2004 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at (817) 588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Agua Dulce, Docket No. 2004-0060-MLM-E on 12/08/2004 assessing \$9,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Glass Container Corporation, Docket No. 2004-0091-AIR-E on 12/08/2004 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aegis Bio-Systems, LLC, Docket No. 2003-0150-MSW-E on 12/08/2004 assessing \$103,950 in administrative penalties with \$103,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Scenic Point Northview, Inc., Docket No. 2002-1018-MWD-E on 12/08/2004 assessing \$33,170 in administrative penalties with \$30,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alvy T. McQueen dba Buzzard Hill Service Station, Docket No. 2003-1028-PST-E on 12/08/2004 assessing \$23,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer Polymers, LLC, Docket No. 2004-0203-AIR-E on 12/08/2004 assessing \$5,712 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Schildwachter, Enforcement Coordinator at (512) 239-2355, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hagg, Inc. dba Speedy Mart, Docket No. 2004-0229-PST-E on 12/08/2004 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamilton Pipeline, Inc., Docket No. 2004-0273-EAQ-E on 12/08/2004 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903) 535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lamar University, Docket No. 2004-0360-PST-E on 12/08/2004 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reynaldo Barrientos dba Chispas Paint & Body Shop, Docket No. 2004-0411-AIR-E on 12/08/2004 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brown Water Marine Service, Inc., Docket No. 2004-0460-MLM-E on 12/08/2004 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at (432) 620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dan Dankworth dba Industrial Waste Landfill Pine St. Salvage Property, Docket No. 2004-0509-WQ-E on 12/08/2004 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at (432) 620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Schenectady International, Inc., Docket No. 2004-0512-AIR-E on 12/08/2004 assessing \$3,275 in administrative penalties with \$655 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Vinson dba Draper Estates Water System, Docket No. 2004-0607-PWS-E on 12/08/2004 assessing \$1,208 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leonard Borchardt dba The Hill Bar and Grill, Docket No. 2004-0627-PWS-E on 12/08/2004 assessing \$735 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Butler Water Supply Corporation, Docket No. 2004-0628-PWS-E on 12/08/2004 assessing \$1,663 in administrative penalties with \$333 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2004-0729-AIR-E on 12/08/2004 assessing \$4,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FE-MA Enterprises, Inc. dba JRS Xpress, Docket No. 2004-0735-PST-E on 12/08/2004 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weslaco, Docket No. 2004-0791-MWD-E on 12/08/2004 assessing \$2,225 in administrative penalties with \$445 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Jansky dba Sweet Home Sand & Gravel, Docket No. 2004-0795-MLM-E on 12/08/2004 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shot Realty Company, Inc. dba Atlantic Relocation Systems, Docket No. 2004-0921-PST-E on 12/08/2004 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200407494  
LaDonna Castañuela  
Executive Assistant  
Texas Commission on Environmental Quality  
Filed: December 23, 2004

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**Texas Health and Human Services Commission**

**Public Notice**

The Health and Human Services Commission, State Medicaid Office, received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Program state plan by Transmittal Number 04-26, Amendment Number 690.

This amendment revises the Reimbursement Methodology for Nursing Facilities. The amendment relates to the redistribution of funds recouped through the enhanced direct care staff rate program from providers who failed to meet their staffing and/or spending requirements to providers who exceeded their staffing requirements. This process is called reinvestment. The amendment allows providers that were reclassified from a Level 0 to nonparticipants in fiscal year 2004 due to state legislation to be considered for reinvestment in fiscal years 2004 and 2005. The amendment also replaces references to the Texas Department of Human Services (DHS) with references to the Texas Health and Human Services Commission (HHSC) or its designee, or Medicaid, as appropriate. The state plan amendment is effective as of October 2, 2004.

For additional information, please contact Gilbert Estrada, Policy Development Support with the Medicaid/CHIP Division, at (512) 491-1331 or by e-mail at gilbert.estrada@hhsc.state.tx.us.

TRD-200407512  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: December 29, 2004

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

**Multifamily Housing Revenue Bonds (Atascocita Pines Apartments) Series 2005**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Jack Fields Elementary School, 2505 S. Houston Avenue, Humble, Texas 77396, at 6:00 p.m. on January 25, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$11,900,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Conroy Partners LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 192-unit multifamily residential rental development to be located at 230 Atascocita Road, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and

Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200407517  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: December 29, 2004

◆ ◆ ◆  
**Multifamily Housing Revenue Bonds (Canal Place Apartments) Series 2005**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Rusk Elementary School, 2805 Garrow Street, Houston, Texas 77003, at 6:00 p.m. on January 26, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$11,650,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Wayside Luxury Housing Partners LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 200-unit multifamily residential rental development to be located at 2104 Canal Street, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200407516

Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: December 29, 2004

## Houston-Galveston Area Council

Public Meeting Notice

**Public Meeting on the Amendments to the 2004-2006 Transportation Improvement Program (TIP)**

**Tuesday, January 18, 2005**

**6 p.m. - 7 p.m.**

**Houston Galveston Area Council**

**3555 Timmons Lane, 2nd Floor Conference Room A**

**Houston, Texas 77027**

On Tuesday, January 18, 2005, the Houston-Galveston Area Council (H-GAC) will host a public meeting on proposed amendments to the 2004-2006 Transportation Improvement Program (TIP). The public is encouraged to attend this important meeting and provide comments to H-GAC.

Proposed TIP amendments to be discussed include:

\* TIP Amendment 134 - Widen FM 518 to 4 lanes with curb and gutter from FM 2094 to FM 1266, and from FM 1266 to SH 146.

\* TIP Amendment 135 - Construct 4 main lanes and 2 two-lane frontage roads on U.S. 290, east of Bauer to west of Mason; and construct 6 main lanes and 2 two-lane frontages roads with bridge on U.S. 290, east of Mason to west of Mueschke.

The public comment period on the proposed amendments begins **Sunday, January 2, 2005**, and all comments must be received by H-GAC no later than **5 p.m., Monday, January 31, 2005**. Written comments may be submitted to Lynn Spencer, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, e-mailed to [lynn.spencer@h-gac.com](mailto:lynn.spencer@h-gac.com), or faxed to (713) 993-4508.

Copies of the proposed amendments will be available at the meeting and at [www.h-gac.com/transportation](http://www.h-gac.com/transportation), or by contacting Lynn Spencer, Transportation Program Coordinator, at (713) 993-2436 or [lynn.spencer@h-gac.com](mailto:lynn.spencer@h-gac.com).

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Lynn Spencer at (713) 993-2436 to make arrangements.

TRD-200407513  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: December 29, 2004

## Texas Department of Insurance

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of MOLINA HEALTHCARE, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200407518  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: December 29, 2004

## Texas Lottery Commission

### Instant Game Number 515 "DIAMOND DASH"

1.0 Name and Style of Game.

A. The name of Instant Game No. 515 is 'DIAMOND DASH'. The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 515 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 515.

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- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: SILVER BAR SYMBOL, PEARL NECKLACE SYMBOL, GOLD BAR SYMBOL, TOPAZ SYMBOL, EMERALD SYMBOL, SAPPHIRE SYMBOL, RUBY SYMBOL, DIAMOND SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$50.00, \$60.00, \$200 or \$1,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and 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. 515 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
SILVER BAR SYMBOL	SILVER
PEARL NECKLACE SYMBOL	PEARL
GOLD BAR SYMBOL	GOLDBAR
TOPAZ SYMBOL	TOPAZ
EMERALD SYMBOL	EMERALD
SAPPHIRE SYMBOL	SAPPHRE
RUBY SYMBOL	RUBY
DIAMOND SYMBOL	DIAMND
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$60.00	SIXTY
\$200	TWO HUND
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 515 - 1.2E

<b>CODE</b>	<b>PRIZE</b>
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
FIV	\$5.00
SIX	\$6.00
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 Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are

the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$100 or \$200.

I. High-Tier Prize- A prize of \$1,000.

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 (515), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 515-0000001-001.

L. Pack - A pack of "DIAMOND DASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006-010 on the next page; etc.; and tickets 246 to 250 will be on last page. A ticket will be folded over on both the front and back of book so both ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND DASH" Instant Game No. 515 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 "DIAMOND DASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a diamond play symbol in the play area the player wins prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, 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 except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND DASH" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to

pay a \$30.00, \$60.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a 'DIAMOND DASH' Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a 'DIAMOND DASH' 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 Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources 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 'DIAMOND DASH' 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 'DIAMOND DASH' 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 or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. 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.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

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, 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, 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. 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 17,040,000 tickets in the Instant Game No. 515. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 515 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1.00	1,431,360	11.90
\$2.00	1,704,000	10.00
\$3.00	136,320	125.00
\$4.00	102,240	166.67
\$5.00	68,160	250.00
\$6.00	68,160	250.00
\$10.00	68,160	250.00
\$20.00	51,120	333.33
\$30.00	15,620	1,090.91
\$60.00	11,360	1,500.00
\$100	2,130	8,000.00
\$200	1,917	8,888.89
\$1,000	362	47,071.82

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.65. 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 Commission.

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. 515 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. 515, 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-200407493  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: December 23, 2004



Instant Game Number 527 "WILD 10'S"

1.0 Name and Style of Game.

A. The name of Instant Game No. 527 is "WILD 10'S". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 527 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 527.

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- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 10X SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$75.00, \$100, \$150, \$300, \$500, \$1,000 and \$110,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and 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. 527 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
10X SYMBOL	WINX10
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$75.00	SVY FIV
\$100	ONE HUND
\$150	ONE FTY
\$300	THR HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$110,000	110 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 527 - 1.2E

CODE	PRIZE
TEN	\$10.00
FTN	\$15.00
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 Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number 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 \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100, \$250 or \$500.

I. High-Tier Prize- A prize of \$5,000 or \$110,000.

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 (527), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 527-0000001-001.

L. Pack - A pack of "WILD 10'S" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will show the front of ticket 001 and back of 050.

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 "WILD 10'S" Instant Game No. 527 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 "WILD 10'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of Your Numbers play symbols to any of the Wild Numbers play symbols the player wins prize indicated for that number. If a player reveals a 10X play symbol the player wins 10 (ten) times the prize indicated for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) 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, unless specified, 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 except for dual image games;

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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
  17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.
- 2.2 Programmed Game Parameters.
- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate non-winning Your Numbers on a ticket.

- C. No duplicate Wild Numbers on a ticket.
- D. No more than four like non-winning prize symbols on a ticket.
- E. A non-winning prize symbol will never be the same as a winning prize symbol.
- F. The occurrence of the multiplier symbol will only appear as dictated by the prize structure.
- G. 12. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 10'S" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00 \$50.00, \$75.00, \$100, \$250 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00 \$50.00, \$75.00, \$100, \$250, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD 10'S" Instant Game prize of \$5,000 or \$110,000, 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 "WILD 10'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources 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 "WILD 10'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WILD 10'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code Section 466.408. 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.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

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, 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, 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. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 527. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 527 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	705,600	7.14
\$15	302,400	16.67
\$20	277,200	18.18
\$25	126,000	40.00
\$50	100,800	50.00
\$75	65,478	76.97
\$100	23,310	216.22
\$250	2,520	2,000.00
\$500	1,344	3,750.00
\$5,000	84	60,000.00
\$110,000	9	560,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.14. 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 Commission.



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. 527 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. 527, 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-200407492  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: December 23, 2004

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Approval of Depreciation Rate Change**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 27, 2004, for approval of increased depreciation rates pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2005) (PURA) §52.252 and §53.056. A summary of the application follows.

Docket Title and Number: Application of Etex Telephone Cooperative, Incorporated for Approval of Depreciation Rate Increase Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 30603.

The Application: Etex Telephone Cooperative, Incorporated filed with the Public Utility Commission of Texas an application for approval of an increased depreciation rate to 10.3% for its Account 2212.100 - Digital Switching Equipment, an increased depreciation rate to 14.4% for its Account 2212.101 - Digital Switching Equipment, and an increased depreciation rate to 14.2% for its Account 2232.601 - Digital Loop Carrier Equipment, effective January 1, 2004.

Persons who wish to intervene in the proceeding or comment upon the action sought 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 30603.

TRD-200407514  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2004

◆ ◆ ◆  
**Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority**

On December 20, 2004, Emergent Communications LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60455. Applicant intends to relinquish its certificate.

The Application: Application of Emergent Communications LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30588.

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 January 12, 2005. 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 30588.

TRD-200407490  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2004

◆ ◆ ◆  
**Notice of Application for Waiver from Requirements**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 20, 2004, for waiver from the requirements in P.U.C. Substantive Rule §26.54(b)(3) and (b)(4)(C). A summary of the application follows.

Docket Title and Number: Application of Dell Telephone Cooperative, Inc. for an Extension of Waiver From Requirements in P.U.C. Substantive Rule §26.54(b)(3) and P.U.C. Substantive Rule §26.54(b)(4)(C).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735- 2989. All comments should reference Docket Number 30585.

TRD-200407491  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2004

◆ ◆ ◆  
**Notice of Application to Amend Certificated Service Area Boundaries**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on December 22, 2004, for an amendment to certificated service area boundaries.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, for a Minor Boundary Amendment to its Certificate of Convenience between Allison and Wheeler Exchanges. Docket Number 30598.

The Application: The proposed service area boundary change between the Allison Exchange of SBC Texas and the Wheeler Exchange of Valor Telecom is being filed in order for SBC Texas to provide local exchange telephone service to an area that is currently located within Valor Telecom's certificated serving area. There are two residential premises in the affected area. Neither one is being served by Valor, and both are without local exchange telephone service. Valor has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than January 14, 2005, by

mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30598.

TRD-200407515  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 29, 2004



#### Notice of Filing Made for Approval of a Tariff Rate Change for a New Service Charge Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Comanche County Telephone Company, Incorporated (Comanche County) with the Public Utility Commission of Texas (commission) on December 7, 2004 to make a tariff rate change.

Docket Title and Number: Application of Comanche County Telephone Company, Incorporated for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 30508.

The Application: Comanche County has filed a statement of intent with the commission to change the monthly rates for its residential and business Local Exchange Access Line Service. Comanche County proposes to raise its basic local rates by 10%.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Comanche County Telephone Company, Incorporated at Highway 6 South, DeLeon, Texas 76444.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is February 11, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800- 735-2988.

TRD-200407509  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 28, 2004



#### Notice of Petition for Declaratory Order

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a petition on December 17, 2004, for a declaratory order.

Docket Style and Number: Petition of Collin County Commissioners' Court, et al. for Declaratory Order Interpreting P.U.C. Substantive Rule

§25.184(c)(3) to Include Customer- Controlled On-Site Energy Storage, Docket Number 30578.

The Application: The petition requests that the commission issue a declaratory order (1) interpreting the language of P.U.C. Substantive Rule §25.184(c)(3) to clarify that when customer-controlled, on-site energy storage is combined with other measures to form a project that saves energy, reduces peak demand and energy costs, the project is an eligible energy efficiency project under the Commercial and Industrial Standard Offer Program; and (2) declaring that a customer-controlled, on-site energy storage system does not meet the definition of, and should not be treated as, load control or a load management program.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 30578.

TRD-200407508  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 28, 2004



#### Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on December 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Verizon Wireless request for additional telephone numbers in the Granbury rate center .

Docket Title and Number: Petition of Verizon Wireless for Review of Pooling Administrator's Denial of Application for Numbering Resources. Docket Number 30587.

The Application: Verizon Wireless submitted an application to the Pooling Administrator (PA) for numbering resources in the Granbury rate center. The PA denied the request based on the grounds that Verizon Wireless did not meet the month-to-exhaust and utilization criteria.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 21, 2005. 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 30587.

TRD-200407488  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2004



#### Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on December 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Comcast Phone of Texas, LLC request for numbering resources in the Plano and Arlington rate centers.

Docket Title and Number: Petition of Comcast Phone of Texas, LLC for an Expedited Reversal of the Numbering Plan Administration to Withhold Numbering Resources. Docket Number 30584.

The Application: Sprint submitted an application to the Pooling Administrator (PA) for numbering resources in the Plano and Arlington rate centers. The PA denied the request as failing to meet the Federal Communications Commission standards for excessive month-to-exhaust as well as utilization requirements.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 14, 2005. 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 30584.

TRD-200407489  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2004



### Project to Address Modification of the Definition of "Access Line" Pursuant to Local Government Code §283.003 - Request for Comments

The staff of the Public Utility Commission of Texas (commission) held a workshop regarding modification of the definition of "access line" on August 10, 2004, in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 29347, *Project to Address Modification of the Definition of "Access Line"* has been established for this proceeding.

Subsequent to the workshop that was held, the Internet Tax Nondiscrimination Act, Pub. L. No. 180-435 (ITNA) was signed into law on December 3, 2004. The Internet Tax Nondiscrimination Act placed a permanent moratorium on taxes on Internet access and extended a number of fees and taxes on electronic commerce imposed by the Internet Tax Freedom Act (ITFA). Staff notes that Section 1109 entitled, "Exception for Texas Municipal Access Line Fee" is of particular relevance to this project. In this ITNA section, the issue of imposition and collection of municipal access line fees on Voice Over Internet Protocol (VoIP) lines in Texas is addressed. Specifically, Section 1109 of the ITNA states as follows:

#### Exception for Texas Municipal Access Line Fee

"Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line

fee pursuant to Texas Local Government Code Ann. Chapter 283 (Ver-non 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its 'Order Adopting Amendments to Section 26.465 as Approved at the February 13, 2003 Public Hearing' issued March 5, 2003, in Project No. 26412."

Commission staff request that interested persons file comments to the following question regarding this law:

The ITNA amended the ITFA to allow Texas municipalities to collect access line fees for right-of-ways for VoIP traffic. What impact, if any, does this have on the commission investigation into the *Modification of the Definition of "Access Line" Pursuant to Local Government Code §283.003*?

To access a copy of this notice from the PUC web site, go to [www.puc.state.tx.us/telecomm/projects/29347/29347.cfm](http://www.puc.state.tx.us/telecomm/projects/29347/29347.cfm). Responses to this question may be filed by submitting 16 copies to the Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by January 24, 2005. In addition to the printed copies, an electronic copy of all responses shall be submitted by email to [liz.kayser@puc.state.tx.us](mailto:liz.kayser@puc.state.tx.us). All responses should reference Project Number 29347.

Questions concerning this notice should be referred to Liz Kayser, Telecommunications Policy Analyst, Telecommunications Division, (512) 936-7390 or [liz.kayser@puc.state.tx.us](mailto:liz.kayser@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200407474  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 22, 2004



### Railroad Commission of Texas

#### Correction of Error

The Railroad Commission of Texas published a notice entitled "New Gas Services Forms Adopted" in the In Addition section of the December 24, 2004, issue of the *Texas Register* (29 TexReg 12017). There were two forms in the notice.

Due to an error in the agency's submission, a page was omitted from the second form, which begins on page 12021 and is titled "Interim Cost Recovery and Rate Adjustment Report." The missing page, IRA-5, is being published here.

Both forms are available in their entirety on the Railroad Commission web site at <http://www.rrc.state.tx.us/divisions/gas/gasforms/index.html>. They are specifically referenced in new 16 TAC §7.7101, which was adopted in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11949).

Revenue Related and Other Taxes  
Enter Company Name Here  
Twelve Month Period Ending \_\_\_\_\_

	Total	Adjustments* (at Present Rates)	12 Month End As Adjusted (at Proposed Rates)	Change
<b>Non Revenue - Related</b>				
Ad Valorem Tax	-	-	-	-
<b>Revenue - Related</b>				
State Gross Receipts - Tax	-	-	-	-
Local Gross Receipts - Tax	-	-	-	-
Railroad Commission - Gas Utility Tax	-	-	-	-
<b>Total Revenue Related Taxes</b>	-	-	-	-
<b>TOTAL TAXES OTHER THAN INCOME</b>				
* Reference All Adjustments				

TRD-200407511



## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

<http://www.dot.state.tx.us>

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200407471

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: December 22, 2004

## Texas Workers' Compensation Commission

### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

#### Primary

- \* Public Health Care Facility

#### Alternate

- \* Public Health Care Facility
- \* Dentist
- \* Pharmacist
- \* Podiatrist
- \* Employer
- \* Employee
- \* General Public Representative 1
- \* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the *Procedures and Standards for the Medical Advisory Committee* as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www/twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the *Procedures and Standards for the Medical Advisory Committee*. These *Procedures and Standards* are as follows:

**LEGAL AUTHORITY** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION Membership.** The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health

care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS Primary Members.** Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

**Alternate Members.** Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

**Committee Officers.** The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives

a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

**Responsibilities of the Chairman:** Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

**COMMITTEE SUPPORT STAFF** The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

**SUBCOMMITTEES** The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

**WORK GROUPS** When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

**WORK PRODUCT** No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

**MEETINGS Frequency of Meetings.** Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

**CONDUCT AS A MAC MEMBER** Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

**Comportment Requirements for MAC Members:**

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200407505  
Susan Cory  
General Counsel  
Texas Workers' Compensation Commission  
Filed: December 28, 2004



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