
TEXAS REGISTER

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Artist: *Joella Reid*
11th grade
Whiteface High School

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(800) 22607199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
Secretary of State - Elton Bomer
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Customer Relations
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Texas Administrative Code
Dana Blanton
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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0304

F.M. "Skip" Langley, D.V.M., M.D., J.D. Executive Director Texas State Board of Medical Examiners P.O. Box 2018 Austin, Texas 78768-2018

Re: Whether the Texas Board of Medical Examiners may certify a foreign nonprofit corporation, organized under the laws of a jurisdiction other than Texas, as a nonprofit health organization under section 162.001(b) of the Occupations Code (RQ-0250-JC)

S U M M A R Y

Because the phrase "a nonprofit corporation under the . . . Act" in section 162.001(b) of the Occupations Code can reasonably be read as the Board of Medical Examiners has interpreted it, i.e., a nonprofit corporation organized under the Texas Non-Profit Corporation Act, and is in harmony with the rest of the statute, we accept that interpretation and it is controlling.

Opinion No. JC-0305

The Honorable Carole Keeton Rylander Comptroller of Public Accounts P.O. Box 13528 Austin, Texas 78711-3528

Re: Whether the Comptroller must continue to pay monthly installment payments to a county that has stopped, midyear, collecting the fee authorized by section 51.702 of the Government Code, and related question (RQ-0251-JC)

S U M M A R Y

The Comptroller has no duty to remit monthly allotments of statutory county court-at-law supplemental salary funds to a county that discontinues, in the middle of a program year, collecting the filing fees

and court costs authorized by section 51.702 of the Government Code. See Tex. Gov't Code Ann. §§ 25.0015, 51.702(a), (b) (Vernon Supp. 2000).

Under section 25.0016 of the Government Code, each county that participated in the program under section 51.702 during the state fiscal year is entitled to a share of any money left over at the end of that fiscal year. See id. § 25.0016(a). The Comptroller must remit the appropriate portion of the excess funds to a county that discontinues participation midyear. See id. § 25.0016(b).

Opinion No. JC-0306

The Honorable Bill Hill Dallas County District Attorney Administration Building 411 Elm Street Dallas, Texas 75202

Re: Whether the phrase "judicial officer who collected the fees" used in section 51.921(d) of the Government Code refers to the court clerk who collects time-payment fees (RQ-0254-JC)

S U M M A R Y

The "judicial officer who collected the fees" to whom section 51.921(d) of the Government Code refers is the court clerk who collects time-payment fees under section 51.921(a). See Tex. Gov't Code Ann. § 51.921 (Vernon Supp. 2000).

For further information, please call (512) 463-2110

TRD-200007958
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 14, 2000



PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.808

The Texas Credit Union Commission proposes republication of new §91.808 relating to reporting investment activities to the board of directors. This rule will incorporate the reporting requirement provisions of existing §91.802(c) which the Commission has proposed to be deleted from that rule. The first request for comments was published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 3895).

The new rule is proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for re-adoption each of their rules every four years). Notice of Intention to Review Chapter 91 rules was published in the *Texas Register* on February 4, 2000 (25 TexReg 823) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 91 that a need exists for this proposed rule.

No comments were received in response to the first request for comments. However, Department staff has identified the need for additional reporting requirements for investments with longer maturities and more complex features. The Commission concurs with staff's proposed additions.

Lynette Pool, Deputy Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

She has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be that credit union management and the boards of directors will be able to more readily

identify the information that must be monitored for proper management of investments and associated risks. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 35 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under the provisions of §15.402 of the Texas Finance Code that is interpreted to authorize the Credit Union Commission to adopt reasonable rules necessary for administering Subtitle D, Title 3, Texas Finance Code (Texas Credit Union Act).

The specific section affected by this proposed rule is Texas Finance Code 124.351.

§91.808. Reporting Investment Activities To The Board Of Directors.

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

- (1) investments purchased and sold during the month;
- (2) unrealized market gains or losses compared to book value at month's end;
- (3) calculated yield to maturity (current yield on mutual funds) on each outstanding investment as of month's end;
- (4) fair or market value of each marketable investment;
- (5) total book value of investments outstanding at month's end;
- (6) the total amount of investments having maturities exceeding three years and the ratio of the investments to total reserves and undivided earnings;
- (7) unrecorded and unreported obligations to buy or sell investments; and
- (8) amount of investments, other than designated depositories, in other institutions that are not fully insured by the federal deposit

insurance corporation, national credit union insurance fund, or federal or state governments or their agencies.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the investment portfolio, if the aggregate total of the investments with one or more of the features included below exceeds the credit union's reserves and undivided earnings:

- (1) embedded options;
- (2) remaining maturities greater than three years; or
- (3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

- (1) fair value of each marketable investment in the portfolio;
- (2) fair value of the portfolio as a whole; and
- (3) credit union's reserves and undivided earnings.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007788

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 837-9236



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §§8.1 - 8.6

The Texas State Library and Archives Commission proposes to amend Sections 8.1 - 8.6 regarding establishment and operation of the TexShare library consortium. These proposed revisions bring the TexShare rules in alignment with HB 1433, which was enacted by the 76th Legislature.

Michael Piper, Library Resource Sharing Division Director, has determined that for the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Piper also has determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be to clarify rules pertaining to the TexShare library consortium, and to protect the interests of the state as required under law. There are no cost implications to

either small businesses or persons required to comply with the new rule.

Comments on the new rules may be submitted to Michael Piper, Director, Library Resource Sharing Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The new rules are proposed under Government Code §441.205(b) as amended by HB 2721, Acts, 75 Legislature, R.S. (1997) which authorize the commission to adopt rules to govern the operation of the consortium.

The new rules affect Government Code, §441.201 through §441.210.

§8.1. Definitions.

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

(1) Institution of higher education -- an institution of higher education as defined by Education Code, §61.003, and a private or independent institution of higher education as defined by Education Code, §61.003.

~~[(2) Annual Report -- The annual submission of financial and library statistics to the Texas State Library and Archives Commission for inclusion in the publication "Texas Academic Library Statistics."]~~

(2) ~~[(3)]~~Commission -- The Texas State Library and Archives Commission.

(3) ~~[(4)]~~Consortium -- The TexShare Library Consortium.

(4) ~~[(5)]~~Director and Librarian -- Chief executive and administrative officer of the commission.

(5) Public Library has the meaning assigned by Government Code, §441.122

~~(6) Annual Report -- A report submitted to the Commission each year on the member institution of higher education's participation in TexShare programs, or in fulfillment of a public library's system membership requirements.~~

(7) ~~[(6)]~~Internet connection -- A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community [and that adheres to the standard protocols listed in RFC 1920 or its current successor document].

~~[(7) Request for Comments (RFC) -- A version of an Internet specification, published as part of the "Request for Comments" (RFC) document series, the official publication channel for Internet standards documents and other publications of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.]~~

§8.2. Purpose.

The purpose of TexShare is to assist public libraries and libraries at institutions of higher education in Texas:

(1) to improve the availability of library resources in all communities;

(2) ~~[(1)]~~to promote the future well-being of the citizenry and enhance quality teaching and research excellence at institutions of higher education through the efficient exchange of [academic] information and the sharing of library resources;

(3) ~~[(2)]~~to maximize the effectiveness of library expenditures by enabling libraries ~~[at institutions of higher education]~~ to share staff expertise and to share library resources in print and in an electronic form, including books, journals, technical reports, and databases;

(4) ~~[(3)]~~to increase the intellectual productivity of customers ~~[students and faculty]~~ at ~~[the]~~ participating institutions ~~[of higher education]~~ by emphasizing access to information rather than ownership of documents and other information sources; and

(5) ~~[(4)]~~to facilitate joint purchasing agreements for purchasing information services and encourage cooperative research and development of information technologies.

§8.3. *Membership.*

(a) Eligibility. Membership in the consortium is open to all institutions of higher education as determined by the Texas Higher Education Coordinating Board, and to all public libraries that are members of the state library system, as defined in Government Code, §441.127.

(b) Agreement. Public libraries will be TexShare members so long as they remain members of the state library system. Institutions of higher education must file a membership agreement, signed by the president or chancellor, on joining the consortium. Participation in specific programs of the consortium may require additional agreements and fees.

(c) Annual Report. Libraries of member institutions of higher education shall file a current and complete annual report for the preceding year with the commission by January 15 of each year. Public libraries shall file their state library system reports as required by Section 1.85 of this title. ~~[Failure to file a report by January 15 may result in suspension of membership for the next state fiscal year. Revisions to the annual report, which would affect membership status for the next state fiscal year, will not be accepted after February 15. Willful falsification of annual reports shall cause the library to be disqualified for one year in the first instance and disqualified for three years in the second instance.]~~

(d) Multiple Libraries. For institutions of higher education, ~~the~~~~[The]~~ unit of membership in the TexShare Library Consortium shall be the institution. Community college districts may apply as a single unit or as individual campuses; other institutions of higher education with ~~[campus]~~ libraries in multiple locations shall apply as a single unit. Public libraries with branches shall apply as a single unit. Libraries affiliated with professional schools that demonstrate they are administered and budgeted independently of the campus library may apply for separate membership.

(e) Suspension of membership.

(1) Institutions of higher education: Membership will be automatically renewed for each state fiscal year, provided that the institution of higher education continues to meet the definition in subsection (a) of this section; and an annual report has been filed as required by subsection (c) of this section ~~[and that the institution remains qualified for programs of the Texas Higher Education Coordinating Board. Institutions which have lost accreditation or are otherwise not qualified on the first day of any state fiscal year will be suspended from membership until the first day of the succeeding state fiscal year].~~

(2) Public libraries: Public libraries shall remain TexShare members so long as they remain members of the state library system.

(3) Institutions of higher education and public libraries that no longer meet the definition in subsection (a) of this section, or are otherwise not qualified, will be suspended from membership. They may re-join TexShare when they meet the definition in subsection (a) of this section.

(f) Tiers. Institutions of higher education ~~[Member institutions]~~ are placed in one of three tiers on the basis of the size of their book collection and student enrollment, as reflected in the latest statistics from the National Center for Educational Statistics, the Texas Higher Education Coordinating Board, and the Independent Colleges and Universities of Texas ~~[latest annual report filed with the commission].~~

(1) Tier 1: Over 750,000 volumes or over 10,000 enrollment.

(2) Tier 2: 100,000-749,999 volumes or 2,001-9,999 enrollment.

(3) Tier 3: Under 100,000 volumes and 2,000 or less enrollment.

(g) Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services ~~[on the basis of costs for the individual programs and/or the tier placement of the institutions].~~

§8.4. *Advisory Board.*

(a) The commission shall appoint an eleven-member ~~[a nine member]~~ advisory board to advise the commission on matters relating to the consortium. At least two members must be representatives of the general public ~~[members]~~, at least two members must be affiliated with a four-year public university in the consortium, at least two members must be affiliated with a public community college in the consortium, ~~[and]~~at least two members must be affiliated with a private institution of higher education in the consortium, and at least two members must be affiliated with a public library in the consortium. The eleventh ~~[ninth]~~ member is at large without any affiliation specified. Members of the advisory board must be qualified by training and experience to advise the commission on policy.

(b) Members of the advisory board shall be chosen to present as much variety as possible in geographic distribution and size and type of institution.

(c) The advisory board shall meet at least twice a year regarding consortium programs and plans at the call of the advisory board's chairman or of the director and librarian.

(d) Members of the advisory board serve three-year terms beginning September 1.

(e) A member of the advisory board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(f) The advisory board shall elect a chairman~~[-]~~ and a vice chairman ~~[and secretary]~~ at the first meeting of each fiscal year.

(g) The advisory board may recommend to the commission that the consortium enter into cooperative projects with entities other than public libraries or institutions of higher education.

§8.5. *Programs.*

The programs of the consortium shall include activities designed to facilitate library resource sharing. Such activities may include:

(1) providing electronic networks, shared databases, reciprocal borrowing, delivery services, and other infrastructure necessary to enable the libraries in the consortium to share resources,

(2) negotiating and executing statewide contracts for information products and services,

- (3) coordinating library planning, research and development, or
- (4) training library personnel.

§8.6. *Grants: Access to Local Holdings.*

(a) Purpose. To provide seed money to assist libraries in Texas institutions of higher education and public libraries to provide access to their special or unique holdings and to make information about these holdings available to library users across the state.

(b) Eligibility. Libraries in institutions of higher education that have been certified as meeting the TexShare membership requirements in §8.3 of this title (relating to Membership) for the state fiscal year in which the grant is awarded are eligible to apply for local holdings grants. A member library may apply on behalf of a group of member libraries in a cooperative project, or for funding of the member library portion of a project including other libraries or organizations.

(c) Services to be provided. This grant program focuses on making unique library collections accessible for TexShare constituents. Applicants may propose projects designed to increase accessibility through a wide range of activities such as organizing, cataloging, indexing, microfilming and digitizing local materials.

(d) Standards requirements. Cataloging or indexing information created under the grant must be available through the OCLC Incorporated bibliographic database or an Internet connection. Digitized materials must be available through an Internet connection, and be created, stored, and accessible in accordance with the Library of Congress National Digital Library Program as published in Digital Historical Collections: Types, Elements, and Construction, Digital Formats for Content Reproductions, and Access Aids and Interoperability, or their successor documents.

(e) General Selection Criteria.

(1) This grant program is competitive. Selection criteria are designed to select applications that provide the best overall value to the state.

(2) The award criteria include:

(A) program quality as determined by a peer review process; and

(B) the cost of proposed service.

(3) The commission may consider additional factors in determining best value, including:

(A) financial ability to perform services;

(B) state and regional service needs and priorities;

(C) ability to continue services after grant period; or

(D) past performance and compliance.

(f) Peer Review

(1) The commission uses peer reviewers to evaluate the quality of applications in competitive grant programs.

(2) The director and librarian will select qualified individuals to serve as peer reviewers. Peer reviewers shall demonstrate appropriate training, or service on citizen boards in an oversight capacity, and shall not have a conflict of interest.

(3) The commission staff will provide written instructions and training for peer reviewers.

(4) The reviewers score each application according to criteria set by the commission.

(g) Award Criteria. Points for each criterion will be based primarily on the measures listed; raters may also consider other relevant factors in scoring each criterion. The measures and weights for the criteria are:

(1) Significance of the collection. Is the collection unique, or unique for a geographic region? Will the materials be useful to users [at institutions] throughout the state? Does this project focus on materials about Texas? Will the project provide an "advancement of knowledge" rather than cleaning up general backlogs? Maximum Points: 30.

(2) Availability. How will access to the collection be provided? Will bibliographic records be available through OCLC or the Internet? Will materials themselves be available through an Internet connection, through interlibrary loan, through reciprocal borrowing, or only on-site use? Maximum Points: 30.

(3) Project Design. Is the project well defined? Is it a discrete project which can be completed in the grant period? Maximum Points: 15.

(4) Cost Sharing. What is the level of local funding available to share in the project costs? Are matching funds currently available? Are the matching funds higher than the required minimum? Maximum Points: 5.

(5) Cost Effectiveness. How appropriate are the chosen hardware, software, staffing, and service providers for the project, given the cost of the project? Is the budget realistic? Does the project proposal make effective use of the grant funds? Maximum Points: 15.

(6) Evaluation. How well has the applicant designed and described the methodology to evaluate the project and estimate the level of usage? Is the evaluation methodology appropriate and effective? Maximum Points: 5.

(h) Eligible costs. Eligible costs are: Staff or contracted services costs for organizing, cataloging, indexing, or digital conversion of materials; charges for updating shared bibliographic database records; central processing units (CPUs) and associated peripherals, storage devices, telecommunications devices and software necessary to provide storage and access for digitized materials; supply costs necessary to provide storage and access; indirect and audit costs; travel necessary to organize materials directly associated with the grant.

(i) Matching requirement. Each applicant must expend an amount from local funds at least equal to 30% of the total budgeted project costs which are eligible grant costs. If the matching requirement is not met, as determined by audit, the institution will have to refund all or a portion of the grant. The match can be from a foundation grant; gifts from citizens, corporations or organizations; friends of the library donations; revenues from the sale of bonds or certificates of obligation; federal funds; locally appropriated funds; or a combination. State or federal funds awarded to the grantee from any other commission program may not be used as matching funds. Required matching funds must be available at the beginning of the grant period; applicants that have matching funds available, or committed, at the time of application will receive a higher funding priority.

(j) Prior expenditures. Expenditures by local applicants for consultant fees and preliminary planning costs of an approved project, made prior to the date of commission approval, are eligible as matching funds, but only if made within the year prior to the beginning of the grant term.

(k) Maximum award. The maximum grant award will be no more than 20% of the available funding in any given award period.

(l) Application and Review Process. A prospective applicant must submit an application to the commission on the forms and at the time specified by the commission.

(1) The commission staff will review applications to determine if all requested information has been provided in a timely fashion, on prescribed forms.

(A) An application must be complete with proper authorization to qualify for further consideration.

(B) Qualified applications will be forwarded to the peer reviewers for evaluation.

(C) The commission staff will notify applicants eliminated through the screening process within 30 days of the submission deadline.

(2) Peer Reviewers will evaluate applications and assign scores based on the award criteria.

(3) Commission staff will rank each application based on points assigned by peer reviewers, and recommend a priority ranked list of projects to the commission for approval.

(m) Funding Decisions.

(1) The commission will approve a priority ranked list of applicants for possible funding based upon recommendations of commission staff. Final approval of a grant award is solely at the determination of the commission.

(2) Applications for grant funding will be evaluated only upon the information provided in the written application.

(3) Funding recommendations to the commission will consist of the highest ranked applications up to the limit of available funds. If available funds are insufficient to fully fund a proposal after the higher-ranking proposals have been fully funded, staff will negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff will negotiate with the next applicant on the ranked list. The process will be continued until all grant funds are awarded.

(4) In the unlikely event that two proposals receive identical scores and funds are insufficient for both, staff will recommend awarding funds to the applicant requesting the lesser amount of state funding. If any funds remain after an award is made to this applicant, staff will negotiate with the other applicant in question. If these negotiations are unsuccessful, staff will negotiate with the next applicant on the ranked list.

(n) Contract. Following approval of the grant awards by the commission, the staff will issue a contract to the successful applicants based on the information contained in the project application.

(o) Cancellation or Suspension of Grants. The commission has the right to reject all applications and cancel a grant solicitation at any point before a contract is signed.

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

Filed with the Office of the Secretary of State, on November 8, 2000.

TRD-200007808

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

**CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER I. PERMIT PROCESSING**

16 TAC §1.201

The Railroad Commission of Texas proposes new §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively. The Commission proposes the rule under Texas Government Code, Chapter 2005, Permit Processing, and would apply to those permits for which the Commission has determined its median processing time exceeds seven days. For purposes of this rule, the term "permit" includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules. The new rule specifies the period, beginning on the date the Commission receives an initial permit application, in which the Commission will provide written notice to the applicant that a permit application either is complete and accepted for filing or is incomplete and specifying the additional information required for acceptance. An applicant may file no more than two supplemental submissions to complete an insufficient application. The rule further specifies the period, beginning on the date the division or section receives a complete application, in which the Commission must administratively rule on the permit application, or docket it as a contested case proceeding.

An application is complete when the division or section processing the application has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review. Also for purposes of this section, certain applicants are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be procedurally complete.

The division or section receiving permit applications will process them in accordance with the time periods shown in the rule for a particular permit. Time periods are counted on the basis of calendar days. A permit application is received on the date the application reaches the designated division or section within a division of the Commission. The initial review period begins on that date and ends on the date the division or section: (1) gives written notice to the applicant that either the application is complete and accepted for filing or the application is incomplete and describes the specific information required to complete the application; or (2) receives the second supplemental submission on an incomplete application. For incomplete applications, the initial review period begins again each time the division or section

receives additional information, up to a maximum of two supplemental submissions. After the second supplemental submission, the division or section must either administratively rule on the merits of the application if it is complete or deny the application, if it is still incomplete.

The final review period begins on the date the division or section receives the last item necessary to complete an application and ends on the date the permit is administratively granted, administratively denied, or docketed as a contested case proceeding if the application is neither granted nor denied administratively.

An applicant may complain directly to the Director of Energy Operations if a division or section does not process an application within the applicable time periods and may request a timely resolution of any dispute arising from the claimed delay. All complaints must be in writing and must state the specific relief sought, which may include the full reimbursement of the fee paid in that particular application process. As soon as possible after receiving a complaint, the Director of Energy Operations must notify the appropriate division director of the complaint. Within 30 days of receipt of a complaint, the division or section processing the application that is the subject of the complaint must submit to the Director of Energy Operations a written report of the facts relating to the processing of the application, including the division's or section's explanation of the reason or reasons it did or did not exceed the established time periods. If the Director of Energy Operations does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Director may deny the relief requested by the complaint.

If an application is docketed as a contested case proceeding, the time periods in the Commission's General Rules of Practice and Procedure (Chapter 1 of Title 16) are applicable once the application has been filed with the Docket Services Section of the Office of General Counsel.

The following table shows the Commission's minimum, maximum, and median times for processing all permit applications. The time period for each permit begins on the date the Commission receives an initial permit application and ends on the date of the final administrative permit decision, and is based on the Commission's performance data for the 12 months ending December 1999.

Figure: 16 TAC §1.201-Preamble

The Commission has based the permit processing times shown in Table 1 of the rule on permit processing data for calendar year 1999 as well as on educated estimates for those permits for which the Commission has no data or for which the data are unreliable or unrepresentative. For example, during 1999, the Commission processed no applications for an exception to a liquefied natural gas rule pursuant to 16 Texas Admin. Code §13.2052; however, because of the requirement that an applicant provide notice to certain persons, who then have 18 days to file an objection to the application, the median processing time will always be more than seven days.

Mary ("Polly") Ross McDonald, Deputy General Counsel, has determined that for each of the first five years the proposed new rule will be in effect there will be no fiscal implications for state government. The Commission does not anticipate that the proposed new rule will result in either an increase or a decrease

in the number of applications filed, reviewed, and ruled on administratively. Commission staff will likely consult with and advise applicants whose applications are incomplete, similar to the process in place now. The major difference will be that following the second supplemental filing for an incomplete application, the staff will be required to make a determination: if the application is then complete, then the staff will administratively grant or deny the application on its merits; if it is still incomplete, then the staff will be required to administratively deny the application. The Commission is unable to estimate how many, if any, complaints related to permit processing might be filed and whether such complaints would result in the refund of any permit fees. For each of the first five years the proposed new rule will be in effect there will be no fiscal implications for local government.

Ms. McDonald has also determined that for each year of the first five years the new rule as proposed will be in effect the public benefit anticipated as a result of enforcing the new rule will be more efficient use of Commission resources in processing permit applications. Applicants will know, within a certain time following the initial filing of an application, whether the application is complete or not and, if not, what additional information the Commission requires. Applicants will also know how long it will take the Commission staff to review a permit application once it is complete. Finally, applicants will have a process for complaining about permit processing problems, and a procedure for pursuing any such complaints.

There will be some economic costs related to the new rule which will affect individuals, small businesses, and micro-businesses who apply for permits at the Commission. These entities are likely to experience such economic costs differently, depending on the type of permit applied for, whether it is complete or not when filed, whether supplemental filings are required and made, and the administrative ruling on the application. Applicants who are not able to submit a complete application, even with the two supplemental filings permitted under the rule, either will withdraw their applications or have them denied (and may start over with a new application), or will take them to hearing in a contested case procedure. While that will be more costly for those applicants than an administrative procedure culminating in an administrative approval, the rule will require the Commission to take some action and thus will provide such applicants an earlier option for withdrawal or contested case hearing than may be the case now.

The Commission has not requested a local employment impact statement pursuant to Tex. Gov't Code, §2001.022(h).

Comments on the proposed new rule may be submitted to Mary Ross "Polly" McDonald, Deputy General Counsel, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or via electronic mail to polly.mcdonald@rrc.state.tx.us. Comments will be accepted for 60 (sixty) days after publication in the *Texas Register* and should refer to "Proposed New Rule §1.201." For additional information, contact Ms. McDonald at (512) 463-7008.

The Commission proposes the new rule under Texas Government Code, §§2005.001-2001.007, which requires the Commission to adopt procedural rules for processing permit applications and issuing permits and to establish by rule a complaint procedure allowing permit applicants to complain directly to the chief administrator of the agency; and under Texas Government Code, §2001.004, which requires agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Government Code, §§2001.004 and 2005.001-2005.007, are affected by the proposed new section.

Issued in Austin, Texas on November 9, 2000.

§1.201. Time Periods for Processing Applications and Issuing Permits Administratively.

(a) Applicability. This rule applies to the permits listed in Column A of Table 1 of this section. For purposes of this rule, the term "permit" includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules and for which the median processing time exceeds seven days.

Figure: 16 TAC §1.201(a)

(b) Completeness. An application is complete when the division or section shown in Column B of Table 1 has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the division or section processing the application. For purposes of this section, certain applicants, as shown in Column D of Table 1, are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be complete.

(c) Time periods.

(1) The date a permit application is received under this section is the date the application reaches the designated division or section within a division of the Commission as shown in Column B of Table 1.

(2) The division or section shown in Column B of Table 1 shall process permit applications in accordance with the time periods shown in Columns F and G of Table 1 for a particular permit. Time periods are counted on the basis of calendar days.

(3) The Initial Review Period, shown in Column F of Table 1, begins on the date the designated division or section receives the application and ends on the date the division or section gives written notice to the applicant indicating that either:

(A) the application is complete and accepted for filing;

or

(B) the application is incomplete, as described in paragraph (4) of this subsection.

(4) If the division or section determines that an application is incomplete, the division or section shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. The Initial Review Period shall start again each time the division or section receives a supplemental filing relating to an incomplete application. After the second supplemental submission, if the application is complete, the division or section shall administratively rule on the application; if the application is still incomplete, the division or section shall administratively deny the application. The division or section specifically does not have the authority to accept or review any other additional supplemental submissions. The division or section shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands. The applicant may withdraw the application.

(5) The Final Review Period, shown in Column G of Table 1, begins on the date the division or section receives the last item necessary to complete an application and ends on the date the permit is:

(A) administratively granted;

(B) administratively denied; or

(C) docketed as a contested case proceeding if the application is neither administratively granted nor administratively denied.

(d) Complaint procedure.

(1) An applicant may complain directly to the Director of Energy Operations if a division or section does not process an application within the applicable time periods shown in Columns F and G of Table 1, and may request a timely resolution of any dispute arising from the claimed delay. All complaints shall be in writing and shall state the specific relief sought, which may include the full reimbursement of the fee paid in that particular application process, if any, as shown in Column E of Table 1. As soon as possible after receiving a complaint, the Director of Energy Operations shall notify the appropriate division director of the complaint.

(2) Within 30 days of receipt of a complaint, the division director of the division or section processing the application that is the subject of the complaint shall submit to the Director of Energy Operations a written report of the facts relating to the processing of the application. The report shall include the division director's explanation of the reason or reasons the division or section did or did not exceed the established time periods. If the Director of Energy Operations does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Director may deny the relief requested by the complaint.

(3) For purposes of this section, good cause for exceeding the established period means:

(A) the number of permit applications to be processed by the division or section exceeds by at least 15 percent the number of permit applications processed by that division or section in the same quarter of the previous calendar year;

(B) the division or section must rely on another public or private entity to process all or part of the permit application received by the agency, and the delay is caused by that entity; or

(C) other conditions exist that give the division or section good cause for exceeding the established period, including but not limited to circumstances such as personnel shortages, equipment outages, and other unanticipated events or emergencies.

(4) The Director of Energy Operations shall make the final decision and provide written notification of the decision to the applicant and the division or section within 60 days of receipt of the complaint.

(5) Hearings. If an application is docketed as a contested case proceeding, it is governed by the time periods in this chapter (relating to General Rules of Practice and Procedure) once the application has been filed with the Docket Services Section of the Office of General Counsel.

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

Filed with the Office of the Secretary of State, on November 9, 2000.

TRD-200007846

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**CHAPTER 8. PIPELINE SAFETY
REGULATIONS
SUBCHAPTER B. REQUIREMENTS FOR
NATURAL GAS AND HAZARDOUS LIQUIDS
PIPELINES**

16 TAC §8.101

The Railroad Commission of Texas proposes new §8.101, relating to pipeline integrity assessment and management plans for intrastate natural gas and hazardous liquids pipelines. The rule will be in new 16 TAC chapter 8 to be entitled "Pipeline Safety Regulations." As part of a future rule review, the Commission plans to move its other pipeline safety rules from chapter 7 to chapter 8. The Commission held two workshops at which agency pipeline safety staff discussed and analyzed the various issues attendant to pipeline integrity testing and received comments from pipeline operators and other personnel.

In order to avoid a "one-size-fits-all" solution, the Commission proposes a performance-based option within the rule under which pipeline operators would develop an integrity assessment and testing program that would identify the risks associated with particular pipeline facilities. Each operator's plan would be required to assess the integrity of specific segments of a pipeline's system, considering all applicable risk factors, including but not limited to such factors as location, age, product, and leak history. Operators would have approximately 12 months to develop their assessment plans and then another five years to do the initial assessments, after which the operators would develop an ongoing integrity management plan for managing the identified risks. The Commission would have to review and accept all plans for integrity assessment and management.

If an operator chooses not to develop an assessment program, then the operator would be required to use the pressure testing or in-line testing options with 5 and 10 year retest intervals. Allowing operators to have these options under proposed new §8.101 will be more difficult for the Commission from an enforcement standpoint because of the many differences between operators and plans; nevertheless, this should allow for integrity assessment and risk management plans to be more closely tailored to the specific characteristics of Texas pipeline facilities.

Based on proposed new §8.101, operators would have to develop a pipeline integrity assessment and management plan for each pipeline subject to 49 CFR 192 or 49 CFR 195. The plan must be completed by February 1, 2002. Operators may use one of two options. The first is a risk-based assessment described in subsection (b)(1). The second option is a prescriptive plan whereby operators must follow the requirements specified in subsection (b)(2). Operators using the risk-based plan are required to conduct at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan must complete the initial assessment by either January 1, 2006, or January 1, 2011. Operators are not

required to file their integrity assessment plans at the Commission. Upon being notified by an operator that a plan is complete, the Commission staff has 185 days to review the plan and either accept it or complete a determination of which portions of the plan do not comply with the rule requirements.

Operators who identify defects or potential defects during the assessment must repair or mitigate the defects before the next testing deadline.

Operators of pipelines for which an integrity assessment was performed prior to the effective date of this proposed new rule would not be required to implement a new plan as long as the original assessment meets the minimum requirements of §8.101.

Operators of pipelines which are not currently subject to this rule but which undergo some change in circumstances which then makes the pipelines subject to this rule shall comply with the requirements of this rule prior to any further operation. Such changes may include but are not limited to an addition to the pipeline, change in the operating pressure of the pipeline, change from inactive to active status, change in population in the area of the pipeline, or change of operator.

Operators with both intrastate and interstate pipelines may use an integrity assessment plan developed for the interstate pipeline facilities, provided that the plan meets the requirements of proposed new §8.101.

Mary McDaniel, Assistant Director, Pipeline and LP-Gas Safety Section, Gas Services Division, has determined that, for each year of the first five years that the new rule is in effect, there will be fiscal implications for state government. The Railroad Commission will incur costs involved with the review of the integrity assessment and management plans. The Commission estimates that the initial review of all integrity assessment and management plans within 185 days, as proposed in §8.101(c), will require four full-time equivalent staff members. Two current employees could be reassigned from other duties within the Commission, and the Commission would need to hire two new full-time engineers. Including the travel costs necessary for completing the reviews, the Commission estimates annual salary and travel costs of approximately \$150,000 for the first and second years. The Commission estimates that annual salary and travel expenses for years three through five will be \$100,000. The Commission also will need to train current and new staff members to evaluate integrity assessment and management plans; first year training costs are estimated to be \$50,000, and for years two through five, \$20,000 per year. Any other additional tasks required as a result of implementing this proposed new rule will be handled within current staffing and budgets. The Commission anticipates no fiscal implications for local governments.

Ms. McDaniel has also determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be increased safety from pipeline activities in their area because pipeline operators will be required to periodically test pipelines and remediate any problems or potential problems found. In addition, the integrity assessment and management plans for the pipelines will be tailored to the specific characteristics of Texas pipelines.

There is no anticipated economic cost to individuals, small businesses, or micro-businesses other than those individuals, small businesses, or micro-businesses which are pipeline operators. Because proposed new §8.101 allows operators to choose between the two options -- the integrity assessment/management

approach in subsection (b)(1) or the prescriptive approach in subsection (b)(2) -- operators should be able to mitigate cost impact. Cost incurrance will vary for each operator, but could include such things as obtaining experienced personnel to develop, implement, and amend the integrity assessment/management plan and to perform periodic reviews of the plan. To the extent that an operator's integrity assessment plan for interstate pipeline facilities meets the requirements of proposed new §8.101 and can be used for intrastate pipeline facilities, that operator will not incur the same type or the same amount of compliance costs. Costs may also be incurred for removing or repairing pipeline defects or anomalies found in the course of conducting the assessments, but such costs are likely to be less than the costs of a catastrophic pipeline failure that might otherwise occur.

Comments on the proposal may be submitted to Mary McDaniel, Assistant Director, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or via electronic mail to mary.mcdaniel@rrc.state.tx.us. Comments will be accepted for 45 days after publication in the *Texas Register* and should refer to Gas Utility Docket No. 9177. For more information, call Ms. McDaniel at (512) 463-7058.

The new rule is proposed under Texas Utilities Code, Chapter 121, Subchapter E, which authorizes the Commission to adopt safety standards for the transportation of natural gas and for natural gas pipeline facilities; to require record maintenance and reports; and to inspect records and facilities to determine compliance with adopted safety standards; and Texas Natural Resources Code, Chapter 117, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids by pipeline and intrastate hazardous liquids pipeline facilities.

The Texas Utilities Code, Chapter 121, Subchapter E, and the Texas Natural Resources Code, Chapter 117, are affected by the proposed new rule.

Issued in Austin, Texas on November 9, 2000.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

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

(1) Direct assessment--A structured process that defines locations where a pipeline is physically examined to provide supplemental assurance of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in subsection (b)(1) of this section. The physical examination may include coating examination and other applicable non-destructive evaluation.

(2) In-line inspection--An internal inspection tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation.

(3) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR §§192.503(b)(c)(d), 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR §§195.304, 195.305, 195.306, 195.308, and 195.310.

(b) By February 1, 2002, operators of intrastate transmission and gathering lines subject to the requirements of 49 CFR 192 or 49 CFR 195 shall develop and maintain a pipeline integrity assessment and management plan including each system. By that date, each operator shall notify the Commission's Pipeline Safety Section that the plan is complete and which of the following two options the operator selected. The plan shall either use the risk-based analysis described in paragraph (1) of this subsection, or the prescriptive requirements described in paragraph (2) of this subsection. Operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial assessment by January 1, 2006, or January 1, 2011.

(1) The risk-based plan shall contain at a minimum:

(A) identification of the pipelines and pipeline segments or sections in each system covered by the plan;

(B) a priority ranking for performing the integrity assessment of pipeline segments of each system based on an analysis of risks that takes into account:

(i) population density;

(ii) immediate response area designation, which, at a minimum, means the identification of significant threats to the environment (including but not limited to air, land, and water) or to the public health or safety of the immediate response area;

(iii) pipeline configuration;

(iv) prior in-line inspection data or reports;

(v) prior pressure test data or reports;

(vi) leak and incident data or reports;

(vii) operating characteristics such as established maximum allowable operating pressures (MAOP) for gas pipelines or maximum operating pressures (MOP) for liquids pipelines, leak survey results, cathodic protection surveys, and product carried;

(viii) construction records, including at a minimum but not limited to the age of the pipe and the operating history;

(ix) pipeline specifications; and

(x) any other data that may assist in the assessment of the integrity of pipeline segments.

(C) assessment of pipeline integrity using at least one of the following methods appropriate for each segment:

(i) in-line inspection;

(ii) pressure test;

(iii) direct assessment; or

(iv) other new technology. If the operator elects to use a testing methodology not specifically listed in this paragraph, the operator shall include a written description of the new technology and a justification for its use.

(D) management methods for the pipeline segments which may include remediation or increased inspections as necessary; and

(E) periodic review of the pipeline integrity assessment and management plan every 36 months, or more frequently if necessary.

(2) Operators electing not to use the risk-based plan in paragraph (1) shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:

Figure 1: 16 TAC §8.101(b)(2)

Figure 2: 16 TAC §8.101(b)(2)

(c) Within 185 days after receipt of notice that an operator's plan is complete, the Commission shall either notify the operator of the acceptance of the plan or shall complete an evaluation of the plan to determine compliance with this section.

(d) After the completion of the assessment required under either plan, the operator shall promptly remove defects that are immediate hazards and, no later than the next test interval, shall mitigate any anomalies identified by the test that could reasonably be predicted to become hazardous defects.

(e) Operators of pipelines for which an integrity assessment was performed prior to the effective date of this proposed new rule shall not be required to implement a new plan as long as the original assessment meets the minimum requirements of §8.101.

(f) If a pipeline that is not subject to this section undergoes any change in circumstances that results in the pipeline becoming subject to this section, then the operator of such pipeline shall establish integrity of the pipeline pursuant to the requirements of this section prior to any further operation. Such changes include but are not limited to an addition to the pipeline, change in the operating pressure of the pipeline, change from inactive to active status, change in population in the area of the pipeline, or change of operator.

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

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Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The Texas Education Agency (TEA) proposes amendments to 19 TAC §§66.1, 66.7, 66.10, 66.21, 66.24, 66.27, 66.28, 66.36, 66.51, 66.54, 66.69, 66.78, 66.104, and 66.131, concerning state adoption and distribution of instructional materials. The sections establish procedures for the adoption, purchase, and distribution of instructional materials. The sections also specify definitions, requirements, and procedures related to: general provisions; state adoption of instructional materials; local operations; and disposition of instructional materials.

The proposed amendment to §66.1 changes the phrase "materials recommended as suitable for use in bilingual education programs" to "materials recommended as suitable for use in special populations, including bilingual education programs." The current rules refer to "bilingual education" programs only. The

proposed amendment to §66.7(a) corrects a typographical error. New language proposed for §66.10(g) adds wording that refers to the authority of the State Board of Education (SBOE) to assess penalties for back orders. New language proposed for §66.10(i) authorizes the TEA to require cash payment of back-order penalties when circumstances warrant and establishes that a publisher who pays an administrative penalty would not be subject to the liquidated damages provision in the contract for the same violation.

The proposed amendment to §66.21(a) eliminates reference to a six-year review and adoption cycle which has evolved to an eight-year cycle. Proposed new language in §66.24(b) requires that maximum cost of instructional materials under new contract also be considered during the review and renewal of contracts for readopted instructional materials. The proposed amendments to §66.27(b)(2) and §66.51(a)(4) delete the specific "per student" cost configuration to expand the maximum cost determination to include other configurations such as per classroom, per teacher, or site license per school or school district. The proposed amendment to §66.28 removes reference to Proclamations 1997 and 1998 and adds language that adopts by reference the content requirements in Proclamation 2000. The proposed amendment to §66.36(d) adds language to clarify that state textbook review panel members are allowed to collaborate with other panel members during official meetings to review instructional materials under consideration for state adoption. The proposed amendments to §66.54(d) and (h) increase the number of complete samples from two to three that publishers are required to submit for TEA use. The proposed amendment to §66.69 removes the prohibition that publishers only provide ancillary materials that are on the list of ancillary titles submitted to TEA. Publishers would be required to notify TEA of any ancillaries that are provided that were not on the list of ancillary titles filed with TEA. Publishers would also be required to provide the free materials equitably to all school districts and open enrollment charter schools. Proposed new language in §66.78(c) requires publishers to notify affected school districts of the expected ship dates for each title on back order.

Additionally, the proposed amendment to §66.104(b) clarifies the requirement that the local school district or open-enrollment charter school is responsible for paying to the publishers the portion of the cost of instructional materials selected by the school that is above the state maximum. New language proposed for §66.131(d) allows schools to donate out-of-adoption instructional materials, except for electronic textbooks, for recycling locally after all other efforts to donate have been exhausted. The term recycling in this instance is defined as removing the bindings and shredding the textbooks for the purpose of producing new products from the processed materials.

Ann Smisko, associate commissioner for curriculum, assessment, and technology, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Smisko and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of more up-to-date rules with changes that can improve the textbook adoption and distribution process. There may be an effect on small businesses. Some proposed amendments

may have fiscal implications for affected publishers. The anticipated economic cost to persons required to comply with the sections as proposed may include publishers who may be impacted by the proposed amendments. The fiscal implications for affected publishers would be determined as the need may arise on a case-by-case basis.

Comments on the proposal may be submitted to Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@tmail.tea.state.tx.us or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§66.1, 66.7, 66.10

The amendments are proposed under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §31.003.

§66.1. *Scope of Rules.*

The State Board of Education (SBOE) shall adopt lists of conforming and nonconforming instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this chapter. Instructional materials recommended as suitable for use in special populations, including bilingual education programs shall be adopted according to the rules in this chapter for adopting regular instructional materials.

§66.7. *Manufacturing Standards and Specifications.*

(a) Instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the national Advisory Commission on Textbook Specifications. If it is determined that good cause exists [exists], the commissioner of education may recommend that the SBOE grant an exception to this requirement.

(b) If no standards exist for a particular media submitted for adoption, the instructional material is eligible for adoption.

(c) A publisher shall file a statement certifying instructional materials submitted for consideration will meet minimum manufacturing standards if adopted. Each statement must be made on a form provided by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule for the adoption process.

(d) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

§66.10. *Procedures Governing Violations of Statutes -- Administrative Penalties.*

(a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) Penalties for failure to correct factual errors.

(1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of editorial corrections submitted by a publisher under §66.54(g) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(4) A penalty not to exceed \$3,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(d) Categories of factual errors.

(1) Category 1. A factual error in a student component that interferes with student learning.

(2) Category 2. A factual error in a teacher component only.

(3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.

(e) First-year penalties. The base and per-book penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.

(1) Category 1 error. \$25,000 base plus 1% of sales.

(2) Category 2 error. \$15,000 base plus 1% of sales.

(3) Category 3 error. \$5,000 base plus 1% of sales.

(f) Second-year penalties. The base and per-book penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c) and (d) of this section, repeats the violation in the subsequent adoption.

(1) Category 1 error. \$30,000 base plus 1% of sales.

(2) Category 2 error. \$20,000 base plus 1% of sales.

(3) Category 3 error. \$10,000 base plus 1% of sales.

(g) Penalties for failure to deliver instructional materials in a timely manner. The SBOE may assess administrative penalties against publishers who fail to deliver instructional materials in accordance with provisions in the contracts.

(h) [(g)] State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the

seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(i) ~~[(h)]~~ Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver instructional materials in a timely manner.

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

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Criss Cloudt

Associate Commissioner, Accountability Reporting and Research
Texas Education Agency

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For further information, please call: (512) 463-9701



SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.21, 66.24, 66.27, 66.28, 66.36, 66.51, 66.54, 66.69, 66.78

The amendments are proposed under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §31.003.

§66.21. *Review and Adoption Cycles.*

(a) The State Board of Education (SBOE) shall adopt a [~~six-year~~] review and adoption cycle for subjects in the foundation curriculum. No more than one-sixth of the subjects in the foundation curriculum may be reviewed each year. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures shall also be considered when determining placement of subjects in the cycle.

(b) The SBOE shall adopt a review and adoption cycle for subjects in the enrichment curriculum. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures shall also be considered when determining placement of subjects in the cycle.

§66.24. *Review and Renewal of Contracts.*

(a) The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed four years and which contracts should not be renewed.

(b) The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

(1) placement of subject areas in the foundation and enrichment review and adoption cycles;

(2) availability of new instructional materials; ~~[and]~~

(3) willingness of publishers to offer materials for readoption and renewal of contracts ; ~~and [-]~~

(4) cost of instructional materials under new contract.

(c) Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than four years at prices the commissioner of education approves. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

§66.27. *Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.*

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all registered publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 24 months before the scheduled adoption of the new instructional materials by the SBOE.

(b) The proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) a maximum cost to the state [~~per student~~] for adopted instructional materials in each subject for which bids are being invited;

(3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;

(4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and

(5) a schedule for the adoption process.

(c) A draft copy of the proclamation shall be provided to each member of the SBOE and to designated representatives of the publishing industry to solicit input on maximum costs before the SBOE considers the proclamation. In addition, the Texas Education Agency shall hold a public meeting regarding the draft proclamation with representatives of the publishing industry 60-90 days prior to the scheduled adoption of the proclamation by the SBOE. Any revisions recommended as a result of the meeting with publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(d) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the time lines and other requirements of this section.

§66.28. *Adoption by Reference.*

~~{(a) The sections titled "Content Requirements" in the 1997 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the agency's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under~~

Proclamation 1997. A copy of the 1997 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.]

{(b) The sections titled "Content Requirements" in the 1998 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the agency's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 1998. A copy of the 1998 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.]

(a) [(e)] The sections titled "Content Requirements" in the 1999 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 1999. A copy of the 1999 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The sections titled "Content Requirements" in the 2000 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2000. A copy of the 2000 Proclamation of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

§66.36. *State Review Panels: Duties and Conduct.*

(a) The duties of each member of a state review panel are to:

- (1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered;
- (2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the conforming list, nonconforming list, or rejected;
- (3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the state review panel; and
- (4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State textbook review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of Texas Essential Knowledge and Skills, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) Members of each state review panel may be required to be present at the State Board of Education (SBOE) meeting at which instructional materials are adopted.

§66.51. *Instructional Materials Purchased by the State.*

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission shall not exceed the price included with the official sample filed under §66.54 of this title (relating to Samples).

(3) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and shall be provided for the duration of the original contract and any contract extensions at no cost to every teacher that uses the adopted student materials in a school district or open-enrollment charter school.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost [per student] to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with official samples and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period.

(7) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. The cost of such consumables to the state for the entire contract period shall not exceed the maximum cost established in the proclamation.

(8) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and

skills required by the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c)-(f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

§66.54. *Samples.*

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished-format binding.

(b) Two sample copies of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule for the adoption process. These samples shall be available for public review.

(c) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs. At its discretion, the State Board of Education (SBOE) may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the Texas Education Agency (TEA), or members of the state review panel.

(d) ~~Three~~ [Two] official sample copies of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule for the adoption process. Price information required by the commissioner of education shall be included in each sample. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(e) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel on or before the date specified in the schedule for the adoption process. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials, supplementary materials, or descriptions of ancillary or supplementary materials to state review panel members.

(f) The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(g) A publisher shall provide a list of all corrections necessary to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule for the adoption process. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(h) ~~Three~~ [Two] complete sample copies of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule for

the adoption process. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(i) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

§66.69. *Ancillary Materials.*

A publisher of adopted instructional materials shall provide any ancillary item free of charge or at the same price discount to the same extent that the publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all school districts and open enrollment charter schools regardless of size. The title of each ancillary item that a publisher will make available to school districts at no charge and the ratio at which each item shall be supplied shall be filed with the Texas Education Agency (TEA) according to the schedule contained in the proclamation. A publisher must notify TEA of any ancillaries provided to school districts that are not listed with TEA. All packages of ancillary materials shipped to school districts shall be labeled, "Ancillary Materials -- Not Reviewed by the State Board of Education."~~[A publisher of adopted instructional materials shall provide any ancillary item free of charge to the same extent that the publisher provides the item free of charge to any state, public school, or school district in the United States. The title of each ancillary item that a publisher will make available to school districts at no charge and the ratio at which each item shall be supplied shall be filed with the Texas Education Agency (TEA) according to the schedule contained in the proclamation. Publishers are prohibited from providing school districts with ancillary materials not listed. All packages of ancillary materials shipped to school districts shall be labeled, "Ancillary Materials -- Not Reviewed by the State Board of Education."]~~

§66.78. *Delivery of Adopted Instructional Materials.*

(a) Under the Texas Education Code, §31.151, each publisher of adopted instructional materials shall designate one of the depositories approved by the commissioner of education in which a stock of the publisher's adopted instructional materials shall be kept and from which all shipments of the adopted instructional materials to school districts shall be made.

(b) Each publisher is required to have adopted instructional materials in stock and available for distribution to school districts throughout the entire adoption period. A back order is defined as adopted instructional material not in stock when ordered and not available for delivery to school districts or open-enrollment charter schools on the specified shipment date. The commissioner of education shall report the number of back-ordered materials by publisher to the State Board of Education (SBOE).

(c) Each publisher with instructional materials on back order shall notify affected school districts of the expected ship dates for each title on back order.

(d) [(e)] Payments from the Texas Education Agency (TEA) for adopted instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.

(e) [(d)] Any publisher, at its discretion and at least 30 days after notifying the TEA in writing, may change from one depository to another approved depository.

(f) [(e)] Any request to establish a new depository shall be submitted to the commissioner of education by September 1. The effective

date for any new depository shall be April 1 of the year following approval. Each party requesting authority to establish a new depository shall:

- (1) present evidence of financial viability adequate to ensure performance of obligations under all contracts on an annual basis;
- (2) provide specifications for the warehouse; equipment; as appropriate, evidence of a climate-controlled environment for storage of electronic media; plans for staffing of the proposed depository; and computer capability to receive and process orders and communicate in the automated format specified by the TEA;
- (3) submit assurances that a proper stock of instructional materials is available; and
- (4) submit a list of publishers under contract with the request.

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

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Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

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For further information, please call: (512) 463-9701



SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §66.104

The amendments are proposed under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §31.003.

§66.104. Selection of Instructional Materials by School Districts.

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.

(b) If instructional materials priced above the maximum cost to the state established in the proclamation are selected by a school district or open-enrollment charter school, the school district or open-enrollment charter school is responsible for paying to the publisher ~~minutes of the board of trustees or governing body shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for~~ the portion of the cost above the state maximum.

(c) If instructional materials for subjects in the enrichment curriculum that are not on the conforming or nonconforming lists adopted by the State Board of Education (SBOE) are selected by a school district or open-enrollment charter school, the state shall be responsible for paying the district an amount equal to the lesser of:

(1) 70% of the cost to the district of the instructional materials. The applicable quota for adopted materials in the subject shall be

the basis for determining instructional materials needed by the district; or

(2) 70% of the maximum cost to the state established for the subject. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district.

(d) A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects is responsible for the portion of the cost of the materials not eligible for payment by the state under subsection (c) of this section. The minutes of the board of trustees or governing body meeting at which such a selection is ratified shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for the portion of the cost not eligible for payment by the state. A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects also bears responsibility for providing braille and/or large type versions of the non-adopted instructional materials.

(e) Funds paid by the state under subsection (c) of this section shall be used only for purchasing the non-adopted instructional materials selected and ratified by the board of trustees or governing body.

(f) Non-adopted instructional materials selected and purchased under subsection (c) of this section shall be used by the school district or open-enrollment charter school during the contract period for conforming and nonconforming instructional materials adopted by the SBOE in the subject area.

(g) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.

(h) Only instructional materials ratified by the board of trustees or governing body shall be furnished by the state for use in any school district or open-enrollment charter school. Selections certified to the TEA shall be final and, therefore, shall not be subject to reconsideration during the original contract period or readoption contract periods covering the instructional materials selected.

(i) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected in a subject, requisitions may be made for a combined total of the selected titles.

(j) Instructional materials requisitioned by, and delivered to, a school district or an open-enrollment charter school shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title in the same subject.

(k) High school instructional materials may be distributed to middle school or junior high school pupils enrolled in high school classes.

(l) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(m) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of textbooks.

(n) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

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

Filed with the Office of the Secretary of State, on November 13, 2000.

TRD-200007897

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 463-9701



SUBCHAPTER E. DISPOSITION OF INSTRUCTIONAL MATERIALS

19 TAC §66.131

The amendments are proposed under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §31.003.

§66.131. *Out-of-Adoption Instructional Materials.*

(a) School districts or open-enrollment charter schools may retain out-of-adoption instructional materials.

(b) Each school district or open-enrollment charter school shall make out-of-adoption instructional materials (other than electronic instructional materials) available to libraries maintained by city and county jails, institutions within the Texas Department of Criminal Justice, and other state agency institutions.

(c) School officials may donate out-of-adoption instructional materials (other than electronic instructional materials) to students, adult education programs, and nonprofit organizations. Individuals and officials making requests for out-of-adoption instructional materials shall be responsible for transporting the materials.

(d) After all efforts to donate out-of-adoption instructional materials (other than electronic instructional materials) to organizations listed under subsection (c) of this section have been exhausted, a school district or open-enrollment charter school may donate these materials for recycling locally. Recycling is defined as removing the bindings and shredding the textbooks for the purpose of producing new products from the processed materials.

(e) [(†)] Under no circumstances shall out-of-adoption instructional materials be sold by a school district or open-enrollment charter school.

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

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Criss Cloudt

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Texas Education Agency

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER D. UNIFORM BANK BID AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The Texas Education Agency (TEA) proposes amendments to 19 TAC §109.51 and §109.52, concerning uniform bank bids and depository contracts. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid form prescribed by the State Board of Education (SBOE). Section 109.52 establishes the requirement that each school district select a bank or banks as school depository or depositories and enter into a depository contract or contracts with the bank or banks. A school district may also enter into a bond or bonds with the bank or banks. The section includes the depository contract form with the content prescribed by the SBOE.

The proposed amendments include updates to the bid form and the contract form and the addition of a new surety bond form. Proposed revisions to the bid form and contract form include: wording to specify that the content of a surety bond is defined in SBOE rule; details relating to surety bonds such as payments, signatures, school district board of trustee approval, and bond conditioning; specifications regarding the location for the venue for litigation; and conditions for early withdrawal penalties related to interest rates. In addition, a proposed revision to the contract form stipulates that the length of the contract extends until a successor is selected and qualified. The new surety bond form sets forth requirements relating to: guarantee; designation of depository owner(s) and account(s); limit of liability; payment of loss; termination or cancellation; responsibility of bank; consolidation or merger; and sole use and benefits. Specific details relating to the proposed amendments follow.

No changes are proposed to the rule text in §109.51; however proposed revisions are reflected in the uniform bank bid form entitled "Bid Form for Acting as Depository for All Funds," which is referenced as Figure 19 TAC §109.51(b). Specific revisions to the uniform bank bid form, as referenced in the figure, include the following. Language in paragraph J has been revised to specify that the surety bond form filed by a depository must be in the form and with the content prescribed by SBOE rule. Paragraph J has been expanded by adding subparagraphs 1-4 with language to address payments, signatures, school district board of trustee approval, and bond conditioning. Paragraph K has been amended by adding a new subparagraph 7 relating to location for the venue for any litigation arising from a contractual dispute between a depository and the school district. The existing subparagraphs have been retained and renumbered accordingly. Paragraph Q has been amended by adding language to establish provisions relating to a depository imposing an early withdrawal penalty on a time deposit withdrawn within six days of creation of the deposit.

The title of §109.52 has been amended to include reference to the proposed new surety bond form. A technical edit has been made to subsection (a) to include the acronym for TEA. Subsection (b) includes the depository contract form entitled "Depository Contract for Funds of Independent School Districts Under Texas Education Code, Chapter 45, Subchapter G, School District Depositories," which is referenced as Figure 19 TAC §109.52(b). Specific revisions to the depository contract form, as referenced in Figure 19 TAC §109.52(b), include the following. Language has been added in Article I to stipulate that the length of the contract extends until a successor is selected and has qualified. Language in Article III, paragraph A, has been revised to specify that the surety bond form filed by a depository must be in the form and with the content prescribed by SBOE rule. Article III, paragraph A, has been expanded by adding subparagraphs 1-4 with language to address payments, signatures, school district board of trustee approval, and bond conditioning. Article III, paragraph B, has been amended by adding a new subparagraph 7 relating to location for the venue for any litigation arising from a contractual dispute between a depository and the school district. The existing subparagraph has been retained and renumbered accordingly. Article III, paragraph D, has been amended by adding language to establish provisions relating to a depository imposing an early withdrawal penalty on a time deposit withdrawn within six days of creation of the deposit.

Content in new §109.52(c) has been added to establish requirements to be followed if a school district's depository elects to use a surety bond to secure school district deposit amounts. New §109.52(d) has been added to establish the surety bond form prescribed by the SBOE entitled "Texas School Depository Surety Bond Form," which is referenced as Figure 19 TAC §109.52(d). The new surety bond form has been added to set forth requirements relating to: guarantee; designation of depository owner(s) and account(s); limit of liability; payment of loss; termination or cancellation; responsibility of bank; consolidation or merger; and sole use and benefits.

Thomas Canby, Jr., managing director for school financial audits, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Canby and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of public funds deposited in the event of any bank closures. Additionally, the bidding process and the proposed standard forms help ensure fair and open competition for depository bank contracts. Standard forms provide also an advantage to districts in evaluating the best bid in regard to depository bank services and related fees. There will not be an effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@tmail.tea.state.tx.us or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.102(b)(34), which requires the SBOE to prescribe uniform bid blanks for school districts to use in selecting a depository bank as required under §45.206; and §45.208, which requires the SBOE to prescribe the form and content of a depository contract or contracts, bond or bonds, or other necessary instruments setting forth the duties and agreements pertaining to a depository.

The amendments implement the Texas Education Code, §7.102(b)(34) and §45.208.

§109.51. Uniform Depository Bank Bid Form.

(a) Each school district is to use a uniform bid blank form as specified in Texas Education Code, §45.206. A school district may add other terms to the uniform bid blank form based on additional requirements. This form must be provided to each bank located in the school district at least 30 days before the termination of the current depository contract. This form must be filed with the Texas Education Agency in accordance with filing instructions specified in the form.

(b) The uniform bid blank form is provided in this subsection entitled "Bid Form for Acting as Depository for All Funds." Figure: 19 TAC §109.51(b)

§109.52. Uniform Depository Bank Contract and Surety Bond Forms [Form].

(a) Each school district is to use a depository contract form as specified in Texas Education Code (TEC), §45.208. The depository contract form must be completed and filed with the Texas Education Agency (TEA) as specified in TEC, §45.208, and in accordance with filing instructions specified in the form.

(b) The depository contract form is provided in this subsection entitled "Depository Contract for Funds of Independent School Districts Under Texas Education Code, Chapter 45, Subchapter G, School District Depositories." Figure: 19 TAC §109.52(b)

(c) In the event that a school district's depository elects a surety bond to secure school district deposit amounts less any applicable Federal Deposit Insurance Corporation insurance, a surety bond form must be completed and filed with the TEA as specified in TEC, §45.208.

(d) The surety bond form is provided in this subsection entitled "Texas School Depository Bond Form." Figure: 19 TAC §109.52(d)

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

Filed with the Office of the Secretary of State, on November 13, 2000.

TRD-200007899

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research
Texas Education Agency

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 231. ADMINISTRATION SUBCHAPTER A. DEFINITIONS

22 TAC §231.1

The Board of Vocational Nurse Examiners proposes amendment of §231.1 relating to definitions. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Texas Occupations Code, Chapter 302.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§231.1. Definitions.

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

(1) Act - refers to Chapter 302 of the Texas Occupations Code which governs Vocational Nurses [~~the Vocational Nurse Act~~]

(2) - (16) (No change.)

(17) License - A document issued evidencing the person has fulfilled requirements as stated in Chapter 302, Texas Occupations Code . [~~the Vocational Nurse Act~~]

(18) (No change.)

(19) Licensed Vocational Nurse - a person who is licensed under Chapter 302, Texas Occupations Code [~~this Act~~] by the Board of Vocational Nurse Examiners.

(20) - (29) (No change.)

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

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TRD-200007776

Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 305-7653



SUBCHAPTER B. GENERAL PRACTICE AND PROCEDURE

22 TAC §§231.15, 231.27, 231.46 - 231.48

The Board of Vocational Nurse Examiners proposes amendment of §§231.15, 231.27, 231.46, 231.47 and 231.48. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§231.15. Functions of the Board.

The Board is authorized to:

(1) adopt rules and regulations, revising as necessary, to carry in effect the purposes of Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~].

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

(9) keep a register of the names of all nurses licensed under Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~]. This register shall at all times be open to public inspection and available for sale upon request;

(10) - (14) (No change.)

§231.27. Quorum of the Board.

Eight members of the Board shall constitute a quorum for the transaction of business. Should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three successive days as specified in Chapter 302, Texas Occupations Code, Section 302.058 (c). [~~Section 5, Subsection (h) of the Act~~]

§231.46. Identifying Insignia.

Any nurse who is licensed under the provisions of Chapter 302, Texas Occupations Code [~~this Act~~], when on duty, shall wear insignia identifying the nurse as a Licensed Vocational Nurse.

§231.47. *Source of Revenue.*

The Board of Vocational Nurse Examiners is financially self-sustaining as specified in Chapter 302, Texas Occupations Code [~~Section 9 of the Act~~]. The appropriation is set by the Legislature by means of the General Appropriations Act. Such Act stipulates the appropriations and personnel working conditions for State departments. All moneys collected are deposited to the State Treasury. At the end of the fiscal year (August 31st), any unused fees, in excess of the amount appropriated for the following fiscal year, shall be set over and paid into the State's General Revenue Fund.

§231.48. *Bylaws.*

(a) Article I, Title and Purposes

(1) The name shall be the "Board of Vocational Nurse Examiners", House Bill 47-Ch. 118, Acts 52nd Leg., 1951

(2) The purposes of the Board shall be to:

(A) administer Chapter 302, Texas Occupations Code [~~the Act~~];

(B) safeguard the public health and welfare;

(C) elect officers

(D) employ a full time Executive Director, and other persons as the Board deems necessary to carry out the provisions of Chapter 302, Texas Occupations Code [~~the Act~~].

(E) institute disciplinary proceedings as outlined in Roberts' Rules of Order, Newly Revised, in all cases in which they are applicable, and which are consistent with Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~], and these bylaws.

(F) establish rules and policies as are necessary to carry out the provisions of Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~].

(G) prepare curriculum and set standards for schools of vocational nursing, preparing persons for licensure under Chapter 302, Texas Occupations Code [~~this Act~~];

(H) provide through the Director of Education surveys of schools and curriculum approved by the Board and Chapter 302, Texas Occupations Code [~~the Act~~];

(I) approve schools and courses that meet the Board curriculum and standards;

(J) deny or withdraw approval from vocational nursing programs for failure to meet curriculum and standards set by the Board;

(K) provide for examination of graduates of approved schools;

(L) exam and approve credentials of applicants for endorsement;

(M) renew biennially the licenses of persons licensed under Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~];

(N) record all proceedings of the Board and make an annual report to the Governor; and

(O) revoke or suspend any license issued under the provisions of Chapter 302, Texas Occupations Code [~~the Act, Section 10~~].

(b) Article II, Officers and Duties.

(1) The officers of the Board shall be: President, Vice-President, and Secretary-Treasurer.

(2) The term of office for the Vice-President and Secretary-Treasurer shall be for one year. The President serves at the will of the Governor.

(3) The annual meeting shall be September for election of officers.

(4) The officers of the Board shall perform such duties as are usually performed by such officers, as specified in Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~] and these bylaws.

(c) Article III, Amendments. These bylaws may be amended, with or without previous notice, at any meeting by eight members present and voting.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007777

Mary M. Strange, RN, BSN

Executive Director

Board of Vocational Nurse Examiners

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 305-7653



SUBCHAPTER C. BOARD RULES

22 TAC §231.61

The Board of Vocational Nurse Examiners proposes amendment of §231.61. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§231.61. *Purpose.*

The Board shall promulgate and adopt rules as authorized and required by statute, necessary for the performance of its duties; to establish standards of curriculum for vocational nursing programs; to insure strict compliance with an enforcement of the provisions of Chapter 302,

Texas Occupations Code [the Act]; and public participation and notice of Board actions.

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

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TRD-200007778

Mary M. Strange, RN, BSN

Executive Director

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-7653



CHAPTER 233. EDUCATION SUBCHAPTER A. DEFINITIONS

22 TAC §233.1

The Board of Vocational Nurse Examiners proposes amendment of § 233.1. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§233.1. Definitions.

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

(1) - (24) (No change.)

(25) LVN - the Licensed Vocational Nurse who has the authority to utilize the title under Chapter 302, Texas Occupations Code [Texas Civil Statutes for the State of Texas].

(26) - (42) (No change.)

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

Filed with the Office of the Secretary of State, on November 7, 2000, 2000.

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Mary M. Strange, RN, BSN

Executive Director

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-7653



CHAPTER 235. LICENSING SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.1, §235.9

The Board of Vocational Nurse Examiners proposes amendment of § 235.1 and §235.9. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.1. Authority.

Application for licensure will be accepted only under Section 302.305, Section 302.308 and Section 302.352 of the Texas Occupations Code [Section 6 and Section 7 of the Act].

§235.9. Applications and Fees.

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

(c) Personal checks are not acceptable. The Board assumes no responsibility for loss in transit of cash remittances. Each application for examination and licensure as a vocational nurse under Chapter 302, Texas Occupations Code shall be accompanied by the correct fee [Texas Civil Statutes, Article 4528e, Section 6 and Section 7].

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007780

Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 305-7653



SUBCHAPTER B. BOARD REVIEW OF APPLICATION

22 TAC §§235.21 - 235.23

The Board of Vocational Nurse Examiners proposes amendment of § 235.21, 235.22 and 235.23. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.21. *Approved Applications.*

If on the basis of information available to the Board at the time of consideration of a given application, the Board determines that an applicant meets the requirements of Chapter 302, Texas Occupations Code, Subchapter G, [the Act under Section 6, Subsections (a) and (b) or Section 7,] the applicant will be approved for licensure.

§235.22. *Application Not Approved.*

If on the basis of information available to the Board at the time of consideration of a given application, the Board determines that an applicant does not meet the requirements of Chapter 302, Texas Occupations Code, Subchapter G [Section 6, Subsections (a) or (b) or Section 7 of the Act], the application will not be approved and the applicant will be advised in accordance with law. Such disapproval will not prejudice a person from making applications at a future date.

§235.23. *Rejected Application.*

An application for licensure is rejected when by majority vote of a quorum of the Board the applicant does not meet the requirements of other than Chapter 302, Texas Occupations Code, Subchapter G [Section 6, Subsections (a) or (b) or Section 7 of the Act]. When an application is rejected the applicant will be advised in accordance with law and the Board rules and provisions of law on contested cases apply.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

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Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
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For further information, please call: (512) 305-7653



SUBCHAPTER C. EXAMINATION

22 TAC §235.31

The Board of Vocational Nurse Examiners proposes amendment of § 235.31. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.31. *Applicability.*

The following will apply for persons making application under Chapter 302, Texas Occupations Code, Subchapter G, Section 302.305 [Section 6, Subsections (a) or (b) and Section 7 of the Act]. Pursuant to the Board's authority as provided by Section 231.40 of this title (relating to State Board Examination), and other provisions herein:

(1) The examination will be administered at sites approved by the Board according to the test administration agency's schedule.

(2) After approval to take the examination by Board staff, applicants will be notified of eligibility by the test administration agency.

(3) Applications of individuals who do not appear for an examination within one year of graduation or eligibility will be rejected unless evidence of hardship is presented and approved by the Board.

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

Filed with the Office of the Secretary of State, on November 9, 2000.

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Board of Vocational Nurse Examiners
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For further information, please call: (512) 305-7653

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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §§235.42, 235.44, 235.48

The Board of Vocational Nurse Examiners proposes amendment of § 235.42, 235.44 and 235.48. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.42. License.

The license issued by the Board in compliance with the provisions of Chapter 302, Texas Occupations Code [the Act] and Board Rules shall be uniform in all cases.

§235.44. Expirations and Renewals.

The Certificate of Licensure is a license to practice vocational nursing under the provisions of Chapter 302, Texas Occupations Code [the Act], and it must be renewed by the licensee biennially; otherwise such license shall become invalid on the day following expiration date and remain invalid until the date the Board receives the licensee's renewal and penalty fee as established by Chapter 302, Texas Occupations Code [the Act]. Stipulations with reference to expirations and renewals of the license are set out in Subchapter H of Chapter 302, Texas Occupations Code [the Act, Section 8].

§235.48. Reactivation of a License.

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

(e) An individual whose license is in an inactive status or is delinquent for nonpayment of renewal fees, continues to be a licensee of the Board, and is subject to all provisions of Chapter 302, Texas Occupations Code [the Vocational Nurse Act] and Board rules governing licensed vocational nurses, until such time as the license is suspended or revoked by the Board, or the license is not renewable as set out in subsection (d) of this section.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007782
Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 305-7653

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CHAPTER 237. CONTINUING EDUCATION
SUBCHAPTER B. CONTINUING EDUCATION

22 TAC §237.12

The Board of Vocational Nurse Examiners proposes amendment of § 237.12. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§237.12. Authority.

Pursuant to authority set forth in Chapter 302, Texas Occupations Code, Subchapter H, Section 302.353, [Texas Civil Statutes, Article 4528c, §5], the Board is establishing rules requiring participation in continuing education activities for license renewal. The procedure set forth in these rules provide a variety of means for licensees to comply with this requirement.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007783

Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 305-7653



CHAPTER 239. CONTESTED CASE PROCEDURE SUBCHAPTER A. DEFINITIONS

22 TAC §239.1

The Board of Vocational Nurse Examiners proposes amendment of §239.1. The rule is being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§239.1. *Definitions.*

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

(1) Act - refers to Chapter 302 of the Texas Occupations which governs vocational nurses [the Vocational Nurse Act, Article 4528c, Vernon's Annotated Civil Statutes].

(2) - (5) (No change.)

(6) Board - the members of the Board of Vocational Nurse Examiners who are appointed pursuant to Chapter 302, Texas Occupations Code [Texas Civil Statutes, Article 4528e]. The mission of the Board is to protect the health and welfare of the citizens of Texas by establishing safe practitioners.

(7) - (20) (No change.)

(21) Respondent - a person who has been made the subject of a formal or informal complaint alleging violation of Chapter 302, Texas Occupations Code [the Vocational Nurse Act] or rules, regulations or Orders of the Board of Vocational Nurse Examiners.

(22) - (26) (No change.)

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

Filed with the Office of the Secretary of State, on November 9, 2000.

TRD-200007824
Mary M. Strange, RN, BSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: December 24, 2000
For further information, please call: (512) 305-7653



SUBCHAPTER B. ENFORCEMENT

22 TAC §§239.11, 239.17 - 239.19

The Board of Vocational Nurse Examiners proposes amendment of § 239.11, 239.17, 239.18 and 239.19. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§239.11. *Unprofessional Conduct.*

Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public, may include the following described acts or omissions:

(1) - (12) (No change.)

(13) failing to report to the Board or to a Board approved peer assistance program, if applicable, within a reasonable time of the occurrence, any violation or attempted violation of Chapter 302, Texas Occupations Code [the Vocational Nurse Act] or duly promulgated rules, regulations or orders;

(14) - (29) (No change.)

§239.17. *Complaint Investigation and Disposition.*

(a) The Board shall distinguish between categories of complaints as follows:

(1) violations of Chapter 302, Texas Occupations Code [the Vocational Nurse Act] or duly promulgated rules, regulations or orders;

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

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

§239.18. *Penalties and Sanctions.*

If the Board finds that a person has violated any of the provisions of Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~], or a rule or Order of the Board, the Board may impose one or more of the following:

(1) - (9) (No change.)

§239.19. *Schedule of Fines.*

In disciplinary matters, the Board shall assess a monetary fine in the circumstances and amounts as described:

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

(4) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of Chapter 302, Texas Occupations Code [~~the Vocational Nurse Act~~] and Board Rules.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007784

Mary M. Strange, RN, BSN

Executive Director

Board of Vocational Nurse Examiners

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 305-7653



SUBCHAPTER C. HEARINGS PROCESS

22 TAC §239.35, §239.36

The Board of Vocational Nurse Examiners proposes amendment of § 239.35 and 239.36. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§239.35. *Release of Information.*

(a) (No change.)

(b) After receiving a written request from a licensee who is the subject of a formal complaint initiated and filed under Chapter 302, Texas Occupations Code, Subchapter I, [~~the Vocational Nurse Act, §10 (4)~~], or from the licensee's counsel of record and subject to any other privileges or restrictions set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the licensee with access to all information in its possession that the Board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. However, the Board is not required to provide Board investigative reports or investigative memoranda, the identity of nontestifying complainants, attorney-client communications, attorney-work product, or other materials covered by a privilege as recognized by the Texas Rules of Procedure of the Texas Rules of Civil Evidence. The furnishing of information shall not constitute a waiver of privilege or confidentiality under this section, Chapter 302, Texas Occupations Code [~~this Act~~], or other applicable law.

(c) - (e) (No change.)

§239.36. *Temporary Suspensions.*

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

(d) The license may be suspended under this section without notice or hearing on the Complaint, provided institution of proceedings for a hearing before the State office of Administrative Hearings is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and Chapter 302, Texas Occupations Code [~~Vocational Nurse Act~~]

(e) (No change.)

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007785

Mary M. Strange, RN, BSN

Executive Director

Board of Vocation Nurse Examiners

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 305-7653



CHAPTER 240. PEER REVIEW AND REPORTING

22 TAC §§240.11 - 240.13

The Board of Vocational Nurse Examiners proposes amendment of § 240.11, 240.12 and 240.13. The rules are being amended to change any reference to Vocational Nurse Act or Article 4528c to Chapter 302 Texas Occupations Code.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules.

There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§240.11. Minor Incidents.

(a) The Board believes protection of the public is not enhanced by the reporting of every minor infraction that may be a violation of Chapter 302, Texas Occupations Code [the Vocational Nurse Act]. This is particularly true when there are mechanisms in place in the vocational nurse's employment setting to take corrective action, remediate deficits and detect patterns of behavior. This rule is intended to clarify both what constitutes a minor incident and when a minor incident need not be reported to the Board.

(b) - (f) (No change.)

§240.12. Mandatory Reporting.

(a) A licensed vocational nurse who has observed a violation of Chapter 303, Texas Occupations Code [the Vocational or RN Nurse Act/Rules] which exposed a patient or other person unnecessarily to a serious risk or harm resulting in further medical intervention and/or death shall report said violation to the appropriate supervisory individual and/or submit a written complaint to the appropriate board. The person in authority shall initiate an investigation and report the violation to the peer review committee as deemed appropriate. In facilities where there is not peer review committee, the individual in authority will report the violation to the board office in a signed written document that includes the name of the nurse committing the alleged violation and any other pertinent information.

(b) - (s) (No change.)

(t) This Chapter does not prevent disclosure under Chapter 302, Texas Occupations Code [Texas Civil Statutes, Article 4528e], of formal charges filed by the Board or a final disciplinary action taken by the Board, in whole or in part, of the submitting of a report under this Chapter. In no event may any report or information submitted as required, or authorized by the Chapter, be available for discovery or court subpoena or introduced into evidence in a vocational nursing liability suit.

(u) - (w) (No change.)

§240.13. Minimum Procedural Standards During Peer Review.

(a) Chapter 303, Texas Occupations Code states: "Peer review" means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint". [Article 4525b, §1(2) states, "Peer review means the evaluation of nursing services, the qualifications of nurses, the quality of patient care rendered by nurses, the merits of complaints concerning nurses and nursing care, and determinations or recommendations regarding complaints".] The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Once a decision is made that a nurse is subject to

peer review, Chapter 303, Texas Occupations Code [the Nursing Practice Act (NPA), Article 4525b, §1A(5)], provides that the nurse is entitled to minimum due process. The purpose of this rule is to provide guidance to facilities in developing peer review plans, to assure that nurses have knowledge of the plan, and to provide guidance to the peer review committee in the fact finding process.

(b) - (c) (No change.)

(d) Peer review plans shall contain written procedures to maintain confidentiality of information presented to and/or considered by the peer review committee which is not subject to disclosure except as provided by Chapter 303, Texas Occupations Code [Article 4525b, §3 of the Nursing Practice Act]. Disclosure/discussion by a nurse with a nurse's attorney is proper because the attorney is bound to the same confidentiality requirements as the nurse.

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

Filed with the Office of the Secretary of State, on November 7, 2000.

TRD-200007786

Mary M. Strange, RN, BSN
Executive Director

Board of Vocational Nurse Examiners

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 305-7653



PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.6

The Texas Structural Pest Control Board proposes amendments of 22 TAC 599.6 concerning the real estate transaction report form. The proposal revises the Texas Official Wood Destroying Insect Report form to include language that was inadvertently deleted in the SPCB/T4 form.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

There will be no estimated additional cost, estimated reduction in cost or estimated loss or increase in revenue to state or local government for the first five-year period the rule will be in effect.

The cost of compliance with the rule for small businesses will be negligible. Small businesses will incur copying costs for reproducing the revised SPCB/T4 form.

There will be no cost comparison per employee, cost per hour of labor or cost per \$100 of sales for small or larger businesses.

Benny Mathis, Executive Director has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be the clarification of the required diagram for the structure that is to be treated for the better understanding of the pest control industry, the real estate industry and the consumer. There is no anticipated economic costs to individuals who are required to comply with the rule as proposed.

Comments may be submitted to Frank Crull, General Counsel, Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Tex.Rev.Civ.Stat.Ann., Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate persons who perform wood destroying insect inspections.

There is no other statute, code or article that is affected by this proposed amendment.

§599.6. *Real Estate Transaction Inspection Reports.*

(a) All inspection reports issued regarding the visible presence or absence of termites and other wood destroying insects in connection with a real estate transaction shall be made on a form prescribed and officially adopted by the board.

(b) The report form will include a space to report conditions consistent with §599.5 of this title (relating to Inspection Procedures).

(c) The Texas Official Wood Destroying Insect Report Form SPCB\T-4 is adopted by reference. The form may be examined in the office of the Texas Register and the Structural Pest Control Board. Forms for reproduction may be obtained from the Structural Pest Control Board office, 1106 Clayton Lane, Suite 100LW, Austin, Texas 78723-1066.

(d) For each inspection, copies of the completed form shall be prepared for the:

- (1) person who ordered the inspection; and
- (2) business files of inspecting company.

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

Filed with the Office of the Secretary of State, on November 8, 2000.

TRD-200007839

Benny M. Mathis, Jr.

Executive Director

Structural Pest Control Board

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 451-7200



TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.21

The Texas Cancer Council proposes new §701.21, concerning policies and procedures. The new section is being proposed because the new rule conforms to Texas Government Code, §2161.003, which directs state agencies to adopt the rules of the General Services Commission (GSC) regarding historically underutilized businesses (HUBs) as the agency's own rules. Those rules apply to the Council's purchase of goods and services paid for with appropriated money.

The GSC rules the Council will adopt by reference provide for a policy and a purpose for the rules, definitions applicable

to the HUB rules, annual procurement HUB utilization goals, subcontracting requirements, agency planning responsibilities, state agency reporting requirements, a HUB certification process, protests from denial of HUB applications, a HUB re-certification process, revocation provisions, certification and compliance reviews, compilation of a HUB directory, HUB graduation procedures, review and revision of GSC's HUB program, a memorandum of understanding between GSC and the Texas Department of Economic Development concerning technical assistance and budgeting for the HUB program, HUB Coordinator responsibilities, HUB forum programs for state agencies, and a mentor-protégé program.

Ms. Mickey Jacobs, the Executive Director of the Texas Cancer Council, has determined that for the first five-year period the rule is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rule.

Ms. Jacobs also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the policies and procedures the Council will follow to implement the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Ms. Jacobs has determined that the new rule shall not have an effect on small businesses or on micro businesses.

Comments on the proposed rule may be submitted to Ms. Mickey Jacobs, Executive Director, Texas Cancer Council, P. O. Box 12097, Austin, Texas 78711.

The rule is proposed under the Texas Health & Safety Code Annotated, §§102.002 and 102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and Texas Government Code, Section 2161.003, which directs state agencies to adopt the rules of the General Services Commission (GSC) regarding historically underutilized businesses (HUBs) as the agency's own rules.

There is no other statute, article or code that is affected by this proposed rule.

§701.21. *Historically Underutilized Business Program.*

The Council adopts by reference the rules promulgated by the General Services Commission (GSC) that are set forth at ITAC Chapter 111, Subchapter B, relating to a Historically Underutilized Business program. A copy of the GSC rules may be obtained by writing to Mickey Jacobs, Executive Director, Texas Cancer Council, P. O. Box 12097, Austin, TX 78711-2097 or by accessing the Web site of the Secretary of State, at "www.sos.state.tx.us/tac/."

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

Filed with the Office of the Secretary of State, on November 6, 2000.

TRD-200007774

Mickey L. Jacobs, M.S.H.P.

Executive Director

Texas Cancer Council

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 463-3190



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.173

The Comptroller of Public Accounts proposes an amendment to §3.173, concerning refunds on gasoline and diesel fuel.

Amendment is being made to correct a punctuation error in §3.173, concerning refunds for tax paid on gasoline and diesel fuel used off the highway and sales for certain resale. A comma was inadvertently omitted from subsection (b).

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, §§153.104, 153.119, 153.203, and 153.222.

§3.173. *Refunds on Gasoline and Diesel Fuel Tax.*

(a) (No change.)

(b) Refunds. A person may file a claim for refund of taxes paid on gasoline or diesel fuel used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, and for the provision of transportation services to public school districts.

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

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

Filed with the Office of the Secretary of State, on November 13, 2000.

TRD-200007885

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 463-4062



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 4. TEXAS COMMISSION FOR THE BLIND

CHAPTER 159. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §159.6

The Texas Commission for the Blind proposes amendments to §159.6 concerning payment rates for medical services provided to consumers. The amendments insert the phrase "eye-medical" where appropriate in the standards to clarify the limiting intent of the medical service, and the word "and" is being deleted in one paragraph where it is not needed. The rule is also being amended by adding a subsection (b) that contains the agency's proposed rate schedule based on the standards in subsection (a). The rate schedule, once adopted, are the amounts the Commission will pay for medical services purchased for consumers. Subsection (c) contains the conditions under which payments for medical services may be negotiated. Subsection (d) advises the public of the means by which to view a complete compilation of all individual rates.

Alvin Miller, Chief Financial Officer, has determined that for each year of the first five years the section is in effect there will be no effects on the revenues of the state or local governments. There will likely be fiscal implications relating to costs for purchasing medical services for consumers, but the exact amount cannot be determined. The primary factor in determining the cost of medical services covered by this rule is knowing in advance the number of medical services that will be required by an unknown number of eligible consumers. Based on an analysis of the 50 most frequently purchased eye-medical services for state fiscal year 1999, the additional cost, under the exact circumstances in a given year, is projected to increase the cost to the Commission for these 50 services of approximately \$400,000 per year for each of five years.

Mr. Miller has also determined that for each year of the first five years the rules are in effect the anticipated public benefits will be rates that insure availability of qualified providers in adequate numbers to provide assessment and treatment to agency consumers. There will be no effect on small businesses. The majority of service providers who are affected by the amendments as proposed will receive an increase in medical payments because the agency has not increased its rates in more than five years. Some service providers, however, will be reimbursed at lower rates for a limited number of services.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 377-0611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The rule is proposed under the authority of Human Resources Code, Title 5, Chapter 91, §91.029, which authorizes the Commission to adopt rates the Commission will pay for medical services.

The proposal affects no other statutes.

§159.6. Rates for Medical Services.

(a) Pursuant to Human Resources Code §91.029, the following rules and standards shall govern the rates the commission will pay for medical services:

(1) Subject to any limitations and exceptions specified in this section, eye-medical and related services purchased by the commission for consumers served by its various programs shall be paid for at rates not to exceed rates established by Health Care Finance Administration's (HCFA) relative value units (RVUs) adjusted by the Medicare conversion factor as applied to the Current Procedural Terminology (CPT). Where no HCFA RVU exists, a maximum payment shall be set that represents best value based upon factors that include reasonable and customary industry standards for each specific service. Subject to the same limitations and exceptions, noneye-medical and related services shall be paid at the rates established by the Texas Rehabilitation Commission.

(2) Rates for eye-medical and related services shall be established at a level adequate to insure availability of qualified providers [and] in adequate numbers to provide assessment and treatment[; and] within a geographic distribution that mirrors consumer distribution.

(3) Rates for eye-medical and related services shall be adopted after comparing proposed rates to other cost-based rates for medical services, including Medicaid and Medicare rates. The commission shall document the reasons that any adopted rate exceeds the Medicaid or Medicare rate for the same service.

(4) Rates for eye-medical and related services shall be administered uniformly in all commission programs in accordance with federal regulations governing payment for vocational rehabilitation services, which allows the agency to establish and maintain written policies to govern the rates of payment for all purchased services insofar as the schedule:

(A) is not so low as to effectively deny an individual a necessary service;

(B) permits exceptions so that individual needs can be addressed; and

(C) takes into consideration the consumer's informed choice.

(5) The Board shall review its rate schedule for eye-medical and related services annually after a public hearing to consider whether adjustments are necessary. If between annual reviews it becomes necessary to set the amount of payment for a medical service because a payment rate is not established in these rules or is not otherwise available, the Executive Director is authorized to set the amount on an individual basis with the advice of the agency's medical and optometric consultants. The interim amounts shall be presented to the Board at the next scheduled annual review of all rates.

(6) Until rates are adopted pursuant to this section, the commission shall pay for medical services using amounts contained in the agency's Maximum Affordable Payment Schedule (MAPS). The MAPS shall continue to be maintained in its present form for public inspection at the commission's main office at 4800 North Lamar, Austin, Texas, 78756, until superseded.

(b) Rate schedule. Based on the standards set forth in subsection (a) of this section, the Commission shall pay for medical services according to the following:

(1) The Commission shall pay for eye-medical and related services according to the Health Care Financing Administration's (HCFA) Relative Value Units (RVU) base rate adjusted by the Medicare conversion factor if a rate for the service has been established.

(2) When there are no HCFA RVU rates established for eye-prosthetics and related items, the Commission shall pay the rates established by Medicare for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(3) When there is no HCFA RVU and no established Medicare rate for eye-prosthetics and related items, the Commission shall pay the rates established by Medicaid for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(4) When there is no rate established by Medicare and Medicaid for optical low-vision devices, the Commission shall purchase these from national suppliers at the lowest available catalog price.

(5) The Commission shall pay for noneye-medical and related services that are not unique to persons with visual disabilities according to the Texas Rehabilitation Commission's medical payment rates.

(6) For services and items for which there is neither a rate nor an industry standard that takes into consideration the unique needs of persons with vision loss, the Commission shall pay according to the following:

(A) Low vision evaluation: \$226.92;

(B) Hand-held and other nonspectacle-mounted optical low vision devices: national supplier catalog price with an add-on of a 15% processing fee when purchased through a low vision specialist;

(C) Spectacle-mounted optical low vision devices: national supplier catalog price, with an add-on of a 25% prescriptive/processing fee when purchased through a low vision specialist;

(D) Telescopic and other compound optical low vision device systems, including distance vision telescopes, near vision telescopes and compound microscopic lens systems: national supplier catalog price, with an add-on of a 40% prescriptive processing fee when purchased through a low vision specialist;

(E) Poly carbon safety lens: base prescription, with a \$15.32 per lens add-on;

(F) Deluxe frames (heavy duty; to support optical low vision lens(es), at or above plus or minus 8D, or spectacle mounted optical devices; not for use with lens(es) of less than 8D): \$100.00;

(G) Photo dynamic therapy: \$1,921.62;

(H) Intraocular lens (IOL), anterior, posterior, or iris supported--may pay doctor if not billed by the hospital: \$150.00;

(I) Corneal tissue, including processing, preserving, and transporting: the amount charged by the eye bank;

(J) Full psychological evaluation battery: \$214.20;

(K) Psychological service, diagnostic interview and history: \$35.70;

(L) Psychological service, intelligence test (reporting all subtests and scores): \$71.40;

(M) Psychological service, cognitive test for the blind--verbal and performance measures: \$142.80;

(N) Psychological service, standardized academic achievement test: \$53.55;

(O) Psychological service, projective personality test: \$71.40;

(P) Psychological service, objective personality test (requiring extended assessment time): \$71.40;

(Q) Psychological service, objective personality test (requiring routine assessment time): \$35.70;

(R) Psychological service, vocational interest test: \$35.70;

(S) Psychological service, specific emotional behavior tests: \$35.70;

(T) Psychological service, adaptive behavior test: \$71.40;

(U) Psychological service, organicity perceptual test: \$35.70;

(V) Psychological service, independent review: \$53.55;

(W) Psychological service, general neuropsychological battery: \$357.00;

(X) Psychological service, sensorimotor test: \$71.40;

(Y) Psychological service, Comprehensive Vocational Evaluation System (CVES) Neuropsychological: \$785.40;

(Z) Psychological service, Comprehensive Vocational Evaluation System (CVES) Vocational Evaluation Battery Integrated into Neuropsychological: \$428.40;

(AA) Psychological service, Comprehensive Vocational Evaluation System (CVES) used as Vocational Evaluation: \$500.00;

(BB) Psychological service, individual counseling, per hour, Ph.D. level of academic training and current licensure in accordance with requirements of the licensing entity: \$71.40;

(CC) Psychological service, individual counseling, per hour, Master's level of academic training and current certification in accordance with requirements of the certifying entity: \$60.00;

(DD) Psychological service, group counseling, per hour, Ph.D. level of academic training and current licensure in accordance with requirements of the licensing entity: \$28.00;

(EE) Psychological service, group counseling, per hour, Master's level of academic training and current certification in accordance with requirements of the certifying entity: \$25.00.

(FF) Dispensing of non-prescriptive (stock) optical low vision devices, evaluating a patient's/consumer's initial efficiency in use, and restocking of inventory: \$30.00.

(c) The executive director or the executive director's designee may establish procedures for and may negotiate payments for medical services under the following conditions:

(1) when a consumer's eye-medical condition requires medical services or a combination of eye-medical services unique to the consumer and rates adopted under subsection (b) of this section are not applicable or do not sufficiently describe the needed service; and

(2) when the service or combination of services is not expected to reoccur because of its uniqueness and adopting a standard rate serves no useful future purpose.

(3) when a new medical service or procedure has become FDA approved or when a related service or procedure has become available, and for which there are no established rates yet in any other payment systems.

(d) Maximum Affordable Payment Schedule (MAPS). A compilation of rates and detailed descriptions of the services are contained in the Maximum Affordable Payment Schedule (MAPS), which is available for viewing according to agency rules on access to public information. Because the compilation contains copyrighted information, the MAPS may not be duplicated for public use.

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

Filed with the Office of the Secretary of State, on November 10, 2000.

TRD-200007864

Terrell I. Murphy
Executive Director

Texas Commission for the Blind

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 377-0611



CHAPTER 166. BLINDNESS EDUCATION, SCREENING AND TREATMENT PROGRAM

40 TAC §166.4

The Texas Commission for the Blind proposes the adoption of new §166.4 pertaining to the Blindness Education, Screening, and Treatment Program. This rule implements the treatment portion of the program, which is financed with public donations. The rule prescribes eligibility criteria for receiving assistance with payment for treatment services to prevent blindness and includes how an individual may be referred to the program and how payments will be made under the program.

Alvin Miller, Chief Financial Officer, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections. The funds appropriated to the Commission for services implemented by the rule are limited to the amount donated by the public for program purposes.

Mr. Miller has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rules will be a limited resource for preventing blindness by providing funds for medical or surgical intervention to individuals at risk who are not covered under an adequate health benefit plan. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rule.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 377-0611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The rules are proposed under Human Resources Code, Title 5, Chapter 91, §91.027, which authorizes the commission to develop the program and adopt rules prescribing eligibility requirements

The rules also affect Transportation Code, §521.421.

§166.4. Treatment Services.

(a) The purpose of treatment services is to prevent blindness by providing medical or surgical intervention to individuals at risk who are not covered under an adequate health benefit plan.

(b) To be eligible to receive treatment services from the program, an individual must be an adult resident of the state who:

(1) has been referred to the program by the individual's treating physician or optometrist;

(2) has certified to the physician or optometrist that the individual does not have health insurance or other available resources with which to pay for prescribed treatment to prevent blindness; and

(3) has been certified by the physician or optometrist as having a medically urgent eye condition that poses an imminent risk of permanent and significant visual loss if not treated with surgery or medical intervention.

(c) Medically urgent eye conditions shall include glaucoma, diabetic retinopathy, and detached retina. Any other medical condition, to qualify, must be determined to be medically urgent by both the referral's physician and the Commission's ophthalmologic consultant or his designee.

(d) The BEST program is funded with voluntary donations. It is expected that service demand will exceed program resources. Therefore, funds may not be available for treatment services at the time an individual is referred for assistance.

(e) If an eligible individual is denied services by the program based on the inadequacy of donations to cover the cost of services, the physician may request that the individual be placed on a waiting list pending receipt of adequate funds. Individuals on the waiting list shall be served in order by referral date and time.

(f) All treatment services, including prescription drugs, must be approved in advance by the program to qualify for payment. All prescribed treatment services and requested payments must be itemized on the program's application form.

(g) Over-the-counter and nonprescription drugs are not covered by the program. Program assistance with the cost of eye-related drugs prescribed by a physician to prevent blindness shall be limited to the time the drugs are prescribed by the treating physician or optometrist or one year, whichever is less. The following are the procedures for payment for prescription drugs:

(1) Payments for approved prescription drugs shall be made only to the individual's pharmacy of choice.

(2) The Commission shall pay for the prescription upon receiving an invoice.

(h) Payment for eye examinations that are a follow-up to a prescribed treatment paid for by the BEST Program and determined by a physician as medically necessary for chronic eye conditions such as glaucoma and diabetic retinopathy shall be limited to two examinations in the 12 months following surgery.

(i) Payments for treatment services shall be based on the agency's adopted rate schedule for eye-related medical services as specified in §159.6 of this chapter (also known as the agency's Maximum Affordable Payment Schedule).

(j) Claims for payment must be received within 90 days from the date of each service. Claims received by the program that are lacking the information necessary for processing shall be denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by the program within 60 days from the last denial date or payment will be declined. Excepted from this requirement is the payment for refills of drugs prescribed during the allowed period of one year.

(k) The program shall not pay cancellation charges, charges for missed appointments, or any other charge incurred other than for the actual provision of services.

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

Filed with the Office of the Secretary of State, on November 10, 2000.

TRD-200007863

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Earliest possible date of adoption: December 24, 2000

For further information, please call: (512) 377-0611

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID HOME HEALTH PROGRAM

1 TAC §355.8021

The Texas Health And Human Services Commission has withdrawn from consideration a proposed amendment to §355.8021, which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8113).

Filed with the Office of the Secretary of State on November 6, 2000.

TRD-200007769
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: November 6, 2000
For further information, please call: (512) 458-7236



TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.808

The Credit Union Department has withdrawn from consideration a proposed amendment to §91.808, which appeared in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10863).

Filed with the Office of the Secretary of State on November 7, 2000.

TRD-200007787
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 7, 2000
For further information, please call: (512) 837-9236



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER B. SPILL PREVENTION AND RESPONSE

31 TAC §19.13, §19.14

The General Land Office has withdrawn from consideration proposed amendments to §19.13 and §19.14 which appeared in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7321).

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007882
Larry Soward
Chief Clerk
General Land Office
Effective date: November 13, 2000
For further information, please call: (512) 305-9129



SUBCHAPTER E. VESSELS

31 TAC §19.64

The General Land Office has withdrawn from consideration a proposed amendment to §19.64, which appeared in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7323).

Filed with the Office of the Secretary of State on November 13,
2000.

TRD-200007881

Larry Soward

Chief Clerk

General Land Office

Effective date: November 13, 2000

For further information, please call: (512) 305-9129



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER A. GENERAL GUIDELINES

1 TAC §§55.1 - 55.5

The Office of the Attorney General, Child Support Division, adopts the repeal of §§ 55.1- 55.5, and adopts new §§ 55.1- 55.5 concerning non-cooperation of recipient of public assistance without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25TexReg 4417) and will not be republished.

The repeals are necessary due to the changes in federal statutes concerning child support. The new sections will replace the current sections.

Section 55.1. Agency and Agency Attorneys in Child Support Cases replaces Cooperation Required for Recipients of Child Support Services.

Section 55.2. Title IV-D Agency May Appear as a Party at Any Stage of Litigation replaces Failure to Cooperate.

Section 55.3. Cooperation Required for Recipients of Child Support Services replaces Good Cause for Refusing to Cooperate.

Section 55.4. Determination of Cooperation replaces Agency and Agency Attorneys in Child Support Cases.

Section 55.5. Good Cause for Failure To Cooperate replaces Title IV-D Agency May Appear as a Party at Any Stage of Litigation.

No comments were received regarding the repeals and new rules.

The repeals are being adopted under the Texas Family Code, Chapter 231, pursuant to the September 1, 1997 statutory changes.

The Texas Family Code is affected by 42 USC 654(29) and 454(29) of the Social Security Act.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007878

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Effective date: November 30, 2000

Proposal publication date: May 19, 2000

For further information, please call A.G. Younger at 512-463-2110.



The new sections are being adopted under the Texas Family Code, Chapter 231, pursuant to the September 1, 1999 statutory changes.

The Texas Family Code is affected by 42 USC 654(29) and 454(29) of the Social Security Act.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007877

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Effective date: November 30, 2000

Proposal publication date: May 19, 2000

For further information, please call A.G. Younger at 512-463-2110.



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The State Securities Board adopts an amendment to §109.7, concerning secondary trading exemptions. The rule was adopted without changes to the proposed text as published in

the August 4, 2000, issue of the *Texas Register* (25 TexReg 7281).

The amendment notes that the various "Moody's" manuals listed have been renamed as "Mergent's" manuals and clarifies that electronic versions of the print manuals are also acceptable.

Registered dealers seeking to rely on the exemption contained in the Texas Securities Act, §5.O, are apprised of the manuals included among the Board's "recognized securities manuals" for purposes of the exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007888

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-8300



CHAPTER 115. DEALERS AND SALESMEN

7 TAC §115.1

The State Securities Board adopts an amendment to §115.1, concerning dealer registration requirements for discount brokerage service networks. A new conditional exemption for third party brokerage arrangements on financial entity premises, contained in §139.20, is being concurrently adopted. The rule was adopted without changes to the proposed text as published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7282).

The amendment deletes references to discount brokerage service networks in light of a new conditional exemption for third party brokerage arrangements on financial entity premises.

The amendment eliminates a provision that duplicates another.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007889

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-8300



7 TAC §115.3

The State Securities Board adopts an amendment to §115.3, concerning dealer and agent examinations. The rule was adopted without changes to the proposed text as published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7282).

The amendment makes the examination requirements easier to understand by setting them out in outline format rather than narrative format and removes provisions corresponding with the new conditional exemption for third party brokerage arrangements on financial entity premises contained in §139.20, which is being concurrently adopted.

The amendment makes the examination requirements easier for industry to understand and eliminates a provision that duplicates another.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007890

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-8300



CHAPTER 133. FORMS

7 TAC §133.9

The State Securities Board adopts new form §133.9, a form concerning a notice filing. The new section adopts by reference a form used to claim the conditional exemption contained in §139.20, which is being concurrently adopted. The form was adopted without changes to the proposed text as published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7284).

The form provides the notice filing made to claim a new conditional exemption contained in §139.20. Financial entities coming within the purview of the new §139.20 exemption would file Form 133.9, instead of a complete dealer application package.

The form provides the notice filing to claim a conditional exemption from dealer registration.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides that the Board may prescribe dealer/agent registration exemptions by rule.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007891

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-8300



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.20

The State Securities Board adopts new §139.20, concerning third party brokerage arrangements on financial entity premises. The filing used to claim the conditional exemption is new Form 133.9, which is being concurrently adopted. Existing provisions in the Board's rules addressing these types of activities, contained in §115.1(e) and §115.3(c), are being concurrently deleted. The rule was adopted without changes to the proposed text as published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7284).

The new section creates a conditional exemption for financial entities which provide brokerage services on their premises through an arrangement with a third party registered dealer and for the officers and employees of the financial entity.

The new section provides for a simplified filing when securities activities of a third party dealer are facilitated on the premises of a financial entity and only limited activities involving ministerial-type functions are involved on behalf of the financial entity.

Two comment letters were received on the proposal. The first, from the Independent Bankers Association of Texas ("IBAT"), saluted the initiative and noted that it would reduce the regulatory burden on banks. IBAT suggested that the rule also address compensation paid to the financial entity, define "premises", address Internet linking by a financial entity, and set forth a retention period and the format of records kept relative to this exemption. The second, from the law firm of Kennedy, Baris & Lundy, L.L.P. ("KBL"), applauded the initiative and suggested that the rule clarify "on the premises," address other activities of the financial entity, encompass subsidiaries and holding companies of the financial entity, address "dual employees," permit cross-selling, be expanded to encompass investment advisory services, and eliminate detailed record keeping requirements. The staff noted that to implement many of the changes suggested by the commenters would require the published proposal be withdrawn and replaced with a new proposal at some future Board meeting. Additionally, there are significant benefits to the financial entities covered by the exemption by having the exemption adopted now so it can be in place to provide relief for them during the current dealer registration cycle. The staff noted that amendments to fine tune the rule can be made after the rule has become effective. The Board declined to make changes to the rule at adoption. The Board, however, noted that the rule is expected to be further refined by future rule making to make clarifications addressing certain concerns of the commenters and to refine its use as the Staff receives feedback as the exemption is applied by the industry.

The new rule is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides that the Board may prescribe dealer/agent registration exemptions by rule.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007892

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-8300



TITLE 10. COMMUNITY DEVELOPMENT

PART 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

CHAPTER 190. PROCEDURES OF THE BOARD

10 TAC §§190.2, 190.4 - 190.7

The Texas Department of Economic Development (department) adopts amendments to §§190.2, 190.4 - 190.7, 10 TAC Chapter 190, relating to Rules of Procedures of the Board. The amendments are adopted without changes to the proposed text as published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9744). The department received no comments regarding the amendments.

The amendments clarify the roles of board members, provide for board participation on agency advisory committees, separate functions of the board and staff, provide for delegations of authority to staff, provide that agency counsel will decide points of order at board meetings, and require information to be maintained on complaints to the board.

The amendments are adopted pursuant to Government Code, §481.0044(a), which directs the Governing Board of the department to adopt rules for administration of department programs, and Government Code, Chapter 2001, Subchapter B, Rulemaking, which prescribes the standards for rulemaking by state agencies.

Government Code, Chapter 481, is effected by this proposal.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007876

Tracye McDaniel

Deputy Executive Director

Texas Department of Economic Development

Effective date: November 30, 2000

Proposal publication date: September 29, 2000

For further information, please call: (512) 936-0177



CHAPTER 192. OPEN RECORDS CHARGES

10 TAC §§192.1 - 192.7

The Texas Department of Economic Development (department) adopts the repeal of Chapter 192, §§192.1 - 192.7, Open Records Charges in its entirety, concerning the requirement for all state agencies to specify the charges that the agency will make for copies of public records. The repeal is adopted without changes to the proposal as published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9746). The department received no comments regarding the proposed repeal.

The repeal is necessary to accurately reflect current law and to allow the adoption of new rules that more closely reflect the guidelines adopted by the General Services Commission

The repeal is adopted pursuant to Government Code, §481.0044(a), which directs the Governing Board of the department to adopt rules for administration of department programs, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies, and Government Code, Chapter 552, Subchapter F which requires state agencies to specify the charges that the agency will make for copies of public records.

Texas Government Code, Chapter 481, is affected by this repeal.

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

Filed with the Office of the Secretary of State on November 9, 2000.

TRD-200007847

Tracye McDaniel

Deputy Executive Director

Texas Department of Economic Development

Effective date: November 29, 2000

Proposal publication date: September 29, 2000

For further information, please call: (512) 936-0177



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

19 TAC §33.5

The Texas Education Agency (TEA) adopts an amendment to 19 TAC §33.5, concerning the code of ethics policy for managing and investing the Texas Permanent School Fund (PSF), with changes to the proposed text as published in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7067). The section establishes procedures and requirements for a code of ethics policy relating to the Texas PSF.

The amendment adds language in the current State Board of Education (SBOE) ethics policy requiring that permanent school fund providers submit an annual listing of their board members, officers, and brokers who conduct transactions with permanent school funds. This provision allows any individual to compare this list with the listing of campaign donors maintained by the Texas Ethics Commission.

In response to comments, the following changes have been made to the section since published as proposed.

In subsection (l)(2)(K), language has been added to designate the TEA's PSF office as the recipient of the annual report and that the TEA's PSF office will specify the format of the report; to specify that the report will be deemed to be filed when it is actually received; and to specify that the time period beginning on April 1 and ending on March 31 is the applicable reporting year to be covered in the reports to be filed by April 30.

In addition, subsection (l)(2)(K) has been expanded and reformatted in order to clearly specify that the disclosure is to include the names of the governing body and officers of the firm of a broker who conducts transactions with PSF funds at any time during the applicable reporting year.

The following comments regarding adoption of the amendment were received from the Texas Ethics Commission, the State Auditor's Office, and an individual. As required by statute, the Texas Ethics Commission and the State Auditor's Office reviewed and commented on the proposed amendment to the ethics policy.

Comment. The Texas Ethics Commission supports the rule change finding that it enhances open government. They commented that this required disclosure may assist SBOE members and others in complying with Penal Code, §36.08, and 19 TAC §33.5(l)(2)(B), which restrict acceptance of benefits.

Comment. The State Auditor's Office suggested the expansion of the scope of the rule to cover not only individual brokers but also the names of the governing body and officers of a brokerage firm.

Agency Response. The TEA agrees with this comment and has expanded and modified subsection (l)(2)(K) to clearly specify that the disclosure is to include the names of the governing body and officers of the firm of a broker who conducts transactions with PSF funds.

Comment. An individual commented that the expansion to include the names of the governing body and officers of the firm of a broker who conducts transactions with PSF funds would generate massive reporting. The individual questioned the practicality and usefulness of the submission of such voluminous lists.

Agency Response. TEA has modified subsection (l)(2)(K) to establish that the TEA's PSF office will specify the format of the required listings. Possible formatting may include electronic submission.

Comment. The State Auditor's Office suggested that the reporting year be specified and that it be clearly stated that anyone who is covered by the rule during the reporting year must be identified.

Agency Response. TEA agrees with this comment and has modified subsection (l)(2)(K) to specify that the time period beginning on April 1 and ending on March 31 is the applicable reporting year to be covered in the reports to be filed by April 30 and that the reports list any individuals who served in the specified capacities at any time during the applicable reporting year.

Comment. The State Auditor's Office suggested that the rule should specify the recipient of the reports and the method of determining compliance with the filing deadline.

Agency Response. TEA agrees with this comment and has modified subsection (l)(2)(K) to designate the TEA's PSF office as the recipient of the annual report and to specify that compliance with the filing deadline will be determined by when the report is actually received.

Comment. The State Auditor's Office also suggested that the SBOE should consider whether its penalties need to be more specific.

Agency Response. TEA notes that the amendment as proposed made no mention of changing the penalties and finds that such a change would require reposting. No modifications relating to penalties are included in the adopted amendment at this time.

Comment. The State Auditor's Office suggested that changes be made to a subsection (c)(2)(D) that would require SBOE members to report the names of PSF service providers who are not under contract.

Agency Response. Subsection (c)(2)(D) was not included in the proposed amendment as filed. No modifications to subsection (c)(2)(D) are included in the adopted amendment at this time.

Comment. The State Auditor's Office suggested that subsection (l)(2)(J) should specify the applicable reporting year.

Agency Response. Subsection (l)(2)(J) was not included in the proposed amendment as filed. No modifications to subsection (l)(2)(J) are included in the adopted amendment at this time.

Comment. The State Auditor's Office urged the SBOE to conduct a comprehensive review of its entire Code of Ethics rule. They also advised that the State Auditor's Office may furnish additional comments concerning the SBOE's Code of Ethics rule after legislative interim committees have completed reviews of related issues.

Agency Response. The Code of Ethics rule has been reviewed, discussed, and amended on numerous occasions over the past year, with input from the Texas Ethics Commission and the State Auditor's Office. However, any future legislative direction or other developments that may result in the need for amendments will be considered.

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

§33.5. Code of Ethics.

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

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

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

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

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

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

(B) a member of the Investment Advisory Committee;

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

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

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

(ii) asks the person to interview, meet with, or otherwise confer with current or potential consultants, advisors, money managers, investment custodians, or others who currently provide, or

are likely to provide, services to the SBOE relating to the management or investment of the PSF.

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

(e) General ethical standards.

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

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

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

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

(f) Disclosure.

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

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

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

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

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

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

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

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

(G) is an employee of the business entity.

(g) Conflicts of interest.

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

(2) An SBOE Member shall not participate in a discussion or vote on a matter in which the SBOE Member has direct or indirect financial interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Gifts and entertainment.

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

(2) Acceptance of gifts.

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

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

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

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

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

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

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

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

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

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

(F) The following provisions govern the disposition of an individual who is registered as a lobbyist with the Texas Ethics Commission.

(i) An SBOE Member may not accept:

(I) loans, cash, or negotiable instruments; or

(II) travel or lodging for a pleasure trip.

(ii) An SBOE Member may accept:

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

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

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

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

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

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

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

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

(J) A PSF Service Provider shall file a report annually on April 30 of each year on the expenditure report provided in this subsection entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund." The expenditure report must describe in detail any expenditure of more than \$50 made by the person on behalf of:

(i) an SBOE Member;

(ii) the commissioner of education; or

(iii) an employee of the TEA or of a nonprofit corporation created under the Texas Education Code, §43.006. Figure: 19 TAC §33.5(1)(2)(J)(iii) (No Change.)

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

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

(ii) the officers of the PSF Service Provider;

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

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

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

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

(m) Compliance with professional standards.

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

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

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

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

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

(o) Compliance and enforcement.

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

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

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

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

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

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007893

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research
Texas Education Agency

Effective date: December 3, 2000

Proposal publication date: July 28, 2000

For further information, please call: (512) 463-9701



CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1

The Texas Education Agency (TEA) adopts an amendment to 19 TAC §100.1, concerning application, selection, and amendment procedures and criteria for open-enrollment charter schools, without changes to the proposed text as published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9803) and will not be republished. The section specifies provisions relating to the application form for submission by applicants seeking a charter to operate an open-enrollment charter school; the submission, withdrawal, and review and scoring of an application; applicant interviews; criteria to be considered and additional conditions; and the charter contract and revision of terms.

The adopted amendment to 19 TAC §100.1 includes the following. Language in new subsection (h) establishes a no-contact provision for open-enrollment charter applicants during the application phase until final action is taken by the State Board of Education (SBOE). The no-contact provision also applies to the external application review panel members appointed by the SBOE and allows the SBOE to reject an application for violation of the no-contact provision. New subsection (h) also clarifies that the no-contact provision applies to both renewal applications as well as applications for new charters. In addition, language in new subsection (i) establishes a 50-student enrollment minimum for consideration of an application for an open-enrollment charter, for renewal of an existing charter, and for amendment of an existing charter. The criteria that will be used to determine student enrollment are specified in subsection (i). Language in new subsection (l)(3) allows the SBOE to grant an exception to the June 1 deadline for certain amendments to the terms of an open-enrollment charter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §7.102(c)(9) and §12.110, which authorizes the SBOE to adopt application and selection procedures and criteria for granting and amending open-enrollment charters.

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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Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
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For further information, please call: (512) 463-9701



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.205, §535.212

The Texas Real Estate Commission (TREC) adopts the repeal of §535.205, concerning inspectors licensed under a prior law, and §535.212, concerning education and experience requirements for an inspector license, without changes to the proposed text as published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8589). Section 535.205 was repealed because its provisions have either been placed in other sections or are adequately addressed in Texas Civil Statutes, Article 6573a, §23. Section 535.212 has been replaced with a new section detailing the education and experience requirements for an inspector license and related matters.

No comments were received regarding the proposal.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Filed with the Office of the Secretary of State on November 9, 2000.

TRD-200007843

Mark A. Moseley
General Counsel
Texas Real Estate Commission
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Proposal publication date: September 1, 2000
For further information, please call: (512) 465-3900



22 TAC §§535.206, 535.208, 535.212-535.214, 535.216-535.218, 535.221, 535.223, 535.224, 535.226

The Texas Real Estate Commission (TREC) adopts an amendment to §535.213, concerning schools and courses of study in real estate inspection and new §535.217, concerning dishonest conduct as grounds for disciplinary action, with changes to the proposed text as published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8589). New §535.212 and amendments to §§535.206, 535.208, 535.214, 535.216, 535.218, 535.221, 535.223, 535.224, and 535.226, concerning licensed inspectors, have been adopted without changes.

The amendment to §535.206 modifies the section to be similar in voice and style with other TREC rules and deletes archaic language. The amendment to §535.208 requires applicants for the professional inspector license or the real estate inspector license to obtain an education evaluation prior to filing an application, permitting on-line filing of applications. On line applicants will be required to complete the process by submitting a printed copy of the application containing a signature and photograph within 60 days after paying the filing fee on-line. The amendment also adopts by reference a revised Inspection Log, used by applicants and licensees to show satisfaction of experience requirements, and three revised license application forms. The forms were changed to obtain a permanent mailing address from the applicant and, at the discretion of the applicant, daytime telephone numbers or e-mail addresses to facilitate curative work by TREC staff.

New §535.212 adopts revised guidelines for the acceptance of courses submitted by applicants and permits the acceptance of courses offered by a professional trade association, consistent with changes to other TREC rules. Experience requirements for a license are also addressed in the new section. Those applicants who are applying directly for an inspector license or a professional license on the basis of additional course work will be required to show proportional credit in each of the structural, mechanical and electrical systems. Experience for work in another licensed occupation will be restricted to persons licensed as architects, professional engineers, or engineers-in-training. Applicants who substitute personal work experience will be required to show five years of experience for a real estate inspector license and seven years of experience for a professional inspector license; the experience claimed also will have to be derived from work on each of the three systems found in improvements to real property.

The amendment to §535.213 clarifies that the accreditation and regulation of inspection schools and approval of courses and instructors are conducted under the same guidelines governing real estate schools and instructors. Based on a staff suggestion, the text was modified on adoption to clarify that inspection school instructor approvals issued under prior rules are effective until May 1, 2001. The amendment also provides that a school accredited to offer real estate courses is not required to obtain a separate accreditation to offer inspection courses, provided any

inspection courses have been approved by TREC before they are offered. The amendment to §535.214 deletes archaic language referring to the scheduling of an examination.

The amendment to §535.216 requires licensed inspectors on inactive status to provide TREC with a permanent mailing address and report changes to that address within 10 days after the change. The amendment also permits licenses to be renewed on-line as TREC develops the capacity to handle the inspection renewals in that fashion. If TREC requests information from a licensee in connection with a renewal application, the amendment requires the licensee to furnish the information within 30 days after the request, or be subject to disciplinary action.

New §535.217 addresses conduct by an inspector which may warrant disciplinary action as being dishonest. The proposed text would have required an inspector to disclose and obtain the consent to all parties to a transaction before accepting a fee or other valuable consideration from a person other than the inspector's client. Based on a comment from the Texas Real Estate Inspector Committee that obtaining consent from all parties could be an unnecessary burden and that the most important goal of the section was to ensure that all parties were aware of the inspector's intention to accept a fee or other valuable consideration, §535.217 was modified to require disclosure to all parties and the consent of the inspector's client only. Another comment suggested that the section should be limited so as to require the disclosure and consent of a client only if the service provider paying the fee is providing service to the inspector's client. The commission disagreed with this suggestion, since services may also be provided to the other party in the transaction, for whom the disclosure of fees paid by the service provider to the inspector may be equally material. The new section also requires a licensed inspector to obtain the consent of the inspector's client before paying a portion of the inspector's fee to a service provider or other participant in the real estate transaction for which the inspection has been performed.

The amendment to §535.218 clarifies that, consistent with TREC rules governing real estate courses, completion of a final examination is required for a course offered by alternative delivery methods, such as by computer. The amendment to §535.221 clarifies that Internet advertising and e-mail are included in the definition of the term "advertisements" and that the name or assumed name of a licensee's sponsoring inspector must be included in the licensee's advertisements. The amendment to §535.223 updates references to the standards of practice governing inspectors. The amendment to §535.224 deletes archaic language referring to registrations and update rule and statutory citations found in the section. The amendment to §535.226 requires inspector licensees to notify each other in writing if either terminates a sponsorship or leaves the sponsorship of a professional inspector.

Adoption of the new sections and amendments is necessary to update the sections relating to obtaining and renewing an inspector's license to be consistent with TREC's other licensing programs, ensure quality education programs and instructors, protect the public from unqualified inspectors and provide guidance to licensees concerning their conduct under the law.

The amendments and new sections are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.213. *Schools and Courses of Study in Real Estate Inspection.*

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection and the approval of instructors will be conducted as required for real estate schools by §535.64 of this title (relating to Accreditation of Schools and Approval of Courses and Instructors, §535.65 of this title (relating to Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records) and §535.66 of this title (relating to Payment of Annual Fee, Audits, Investigations and Enforcement Actions). If an instructor was approved prior to the effective date of this section, the approval of the instructor expires May 1, 2001, and the instructor may apply for approval at any time.

(b) A person applying for accreditation of a real estate inspection school shall use application forms approved by the commission . All courses must be approved by the commission prior to being offered for credit. A school accredited by the commission to offer real estate courses is not required to apply for an accreditation under this section to offer real estate inspection courses, provided all courses offered by the school have been approved by the commission. The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.

§535.217. *Dishonest Conduct as Grounds for Disciplinary Action.*

For the purposes of Texas Civil Statutes, Article 6573a, (the Act), §23(l), the commission deems the following conduct by a licensed inspector to be dishonest and grounds for disciplinary action:

(1) accepting a fee or other valuable consideration in a transaction from a person, other than the inspector's client, without first disclosing to all parties in the transaction that the inspector intends to receive the fee or other valuable consideration, and obtaining the consent of the inspector's client.

(2) paying a portion of any fee received by the inspector to a service provider or a participant in a real estate transaction, other than the inspector's client, without the consent of the inspector's client.

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

Filed with the Office of the Secretary of State on November 9, 2000.

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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400, §535.403

The Texas Real Estate Commission (TREC) adopts amendments to §535.400, concerning registration of easement or right-of-way agents, and §535.403, concerning renewal of registration, without changes to the proposed text as published in the September 1, 2000, issue of the Texas Register (25 TexReg 8595).

The amendment to §535.400 adopts by reference revised application forms used by individuals and businesses to file for registration. The forms were modified to obtain a permanent mailing address for the applicant, in addition to e-mail and telephone numbers to facilitate contacts by TREC staff. The amendment also will permit applicants to register on-line once TREC has developed a capacity for such applications. If a person files electronically, the person will be required to complete the application process by submitting a printed copy of the application signed by the applicant and including a photograph of the applicant.

The amendment to §535.403 updates the section to permit registrants to renew their registrations on-line once TREC has developed the capacity for them to do so. The registrant will access the TREC Internet web site, enter the required information and pay the appropriate fee in accordance with the instructions provided at the site. The amendment also adopts by reference a revised renewal application form, which has been changed to obtain a permanent mailing address, rather than a residential address, for each registrant.

Adoption of the amendments was necessary to bring the registration process into conformity with the other TREC licensing programs and to facilitate the on line registration of easement or right-of-way agents.

No comments were received regarding the proposal.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Filed with the Office of the Secretary of State on November 9, 2000.

TRD-200007844

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Effective date: January 1, 2001

Proposal publication date: September 1, 2000

For further information, please call: (512) 465-3900



TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 406. ICF/MR PROGRAMS SUBCHAPTER G. ADDITIONAL FACILITY RESPONSIBILITIES

25 TAC §406.311

The Texas Department of Mental Health and Mental Retardation (department) adopts new §406.311, concerning living options,

of Chapter 406, Subchapter G, concerning additional facility responsibilities, with changes to the text as proposed in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7461).

The new section requires a provider in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program to discuss living options at least annually with each resident or the resident's legally authorized representative (LAR). The facility must use the Community ICF/MR Living Options instrument developed by the department as the basis for the discussion. The facility must notify the local mental retardation authority (MRA) about each individual who expresses a preference for an alternative living arrangement or whose LAR expresses a preference on the individual's behalf. After the MRA is notified, the MRA must contact the individual or LAR to discuss alternative living arrangements, enter the individual's name in the department's Client Assignment and Registration (CARE) system if the service requested is not available, and assist the resident in accessing the service when it becomes available. The new section is responsive to a recommendation from the Promoting Independence Advisory Board to the Texas Health and Human Services Commission that the department develop procedures to identify each individual residing in an ICF/MR who prefers, or whose LAR prefers, an alternative living arrangement.

The new section does not apply to state mental retardation facilities (state schools and those state centers with a residential component) because each state mental retardation facility already is required by department policy to discuss alternative living arrangements with individuals and LARs on an annual basis.

Revisions have been made to the text as proposed. The definition of IDT is revised by specifying that other concerned persons may be included in meetings at the request of the individual or IDT. The revision is consistent with the wording of this provision in the IDT definition used in other rules. The name of the living options instrument referenced in subsection (b) has been changed to "Community ICF/MR Living Options" instrument to distinguish it from the living options instrument used by state mental retardation facilities. The address of the department's website in subsection (b) is revised to specify the exact page on which the instrument can be found. A new paragraph (1) has been added to subsection (b) that specifies that the facility will use information obtained from the MRA in whose local service area the facility is located to inform the individual or LAR of the different types of alternative living arrangements. The word "facility" is deleted between "individual" and "record" in paragraph (2) of subsection (b). In subsections (b) and (c), the term "alternate living arrangement" has been changed to "alternative living arrangement" to clarify that the individual or LAR may consider two or more alternatives to the current service setting in an ICF/MR facility. In (b)(2), the language is revised to specify that the facility will notify the MRA in whose local service area instead of county the facility is located. Subsection (c) is revised to specify that if the individual or the individual's LAR is interested in an alternative living arrangement outside the service area of the MRA serving the area in which the facility is located, the MRA will notify the MRA serving the area in which the individual or LAR is interested. New subsection (d) requires the MRA for the service area in which the individual or LAR expresses an interest to enter the individual's name and the specific type of service requested in the Client Assignment and Registration (CARE) system if the requested service will not be available within 30 calendar days of the date of request and assist the individual in accessing the service requested when it becomes available.

Written comments concerning the section as proposed were received from the parent/guardian of a state school resident, Garland; The Arc of Texas, Austin; The Disability Policy Consortium (DPC), Austin; and Parents Association for the Retarded of Texas (PART), Austin.

One commenter stated that without the presence of an independent third party during IDT meetings at which living options are discussed with the individual or LAR, the program provider has a conflict of interest. The commenter suggested examples of organizations that might be called upon by the program provider to serve as the independent third party and characterized these organizations as having experience in community living alternatives for individuals with disabilities. The department responds that it believes the better policy is to give the individual or LAR the choice as to third party involvement and not require such involvement. The department notes that the rule provides that only the individual or LAR may invite persons not employed by or contracting with the program provider to participate in the individual's IDT meeting.

A commenter recommended that, when department rules establishing the MRA as the "front door" to the ICF/MR Program are adopted, this section should be revised to require a representative from the local MRA to participate in an individual's IDT meeting, particularly when living options will be discussed. The department responds that the commenter's suggestion will be considered when rules are developed that address MRA responsibilities for assisting an individual or the individual's LAR to access mental retardation services and supports, but suggests that fiscal and personnel resources at most MRAs will preclude them from involving staff persons in annual IDT meetings for each ICF/MR program provider in their local service areas.

A commenter requested that the phrase "such as a representative from the MRA" be added to definition of IDT in paragraph (a)(2) after the "other concerned persons." The department responds that the identity of "other concerned persons" invited to the IDT meeting is the prerogative of the individual or LAR and that this language clearly allows for a representative from the MRA to be a concerned person. Therefore, the department declines to make the requested revision.

Two commenters complimented the department on the section's definition of IDT, stating that it is consistent with the definition in the Persons with Mental Retardation Act. The department acknowledges the compliment.

A commenter suggested that the department should encourage each MRA, through whatever means possible, to begin establishing a relationship with program providers in the MRA's local service area. The commenter specified that an MRA should be encouraged to participate in IDT meetings when the individual or LAR requests that an MRA representative be present. The department responds that the commenter's suggestion will be considered when rules are developed that address MRA responsibilities for assisting an individual or the individual's LAR to access mental retardation services and supports.

A commenter recommended that the department add language to the section requiring that easily understood information about all long term care services be provided to the individual and the individual's family. The commenter stated that the provision of this information is required under rules of the Texas Health and Human Services Commission at 1 TAC §351.15. The commenter further suggested that the information should be provided in an easily understood written format used by all providers in the

area to ensure that the information is consistent and presented in an objective manner. The department responds that the provisions of 1 TAC §351.15 are interpreted by the department to be applicable prior to an individual's enrollment in the ICF/MR Program and, therefore, are not relevant to the living options process discussed in this section. The commenter's suggestion will be considered when rules are developed that address MRA responsibilities for assisting an individual or the individual's LAR prior to accessing mental retardation services and supports.

A commenter recommended that all program providers receive training in the administration of the living options instrument and in person-directed planning. The commenter further recommended that surveyors for the ICF/MR program receiving training in the administration of the living options instrument. The commenter stated that such training is necessary for surveyors to be aware of what information should be present in the documentation and to enable surveyors to monitor the process for quality, especially with regard to ensuring that individuals are able to access community services at a reasonable pace. The department responds that training for ICF/MR providers in the administration of the living options instrument and person-directed planning will be offered through conferences required to be held at least annually by the department and the Texas Department of Human Services (TDHS). The department does not have authority to require training for TDHS surveyors but will share the commenter's recommendation with TDHS.

A commenter stated that all training and training materials should include language encouraging ICF/MR program providers to involve the MRA in the IDT process. The department declines to revise training materials because the definition of "IDT" provides that the inclusion of a representative from the MRA on the IDT as one of the "other concerned persons" is the prerogative of the individual or LAR. The department responds that the commenter's suggestion will be considered when rules are developed that address MRA responsibilities for assisting an individual or the individual's LAR to access mental retardation services and supports.

One commenter expressed concern with proposed subsection (c)(3) in which the MRA is mandated to assist the individual in accessing the service requested when it becomes available. The commenter stated that the provision does not comply with the U.S. Supreme Court's ruling in *Olmstead vs. L.C.*, which requires that a state's waiting list must move at a reasonable pace in placing individuals from institutions into less restrictive settings. The department responds that this section is intended to address primarily the responsibilities of program providers for discussing living options with individuals residing in their facilities or with the LARs of those individuals. The department expects to address the MRA's responsibilities in another rule that will deal with how the MRA will assist an individual or LAR to access mental retardation services and supports.

A commenter requested the inclusion of a provision allowing an individual to return to the individual's home county if the individual expresses an interest in moving into the community. The department agrees that clarification regarding the individual or LAR's choice of location of an alternative living arrangement is appropriate and has added new language in subsection (c) and created new subsection (d) to address the commenter's concern. The language directs the MRA in whose local service area the facility is located to determine if the individual or LAR is interested in an alternative living arrangement in another MRA's local service area and, if so, to notify the MRA for that local service area.

The department further notes that the individual or LAR may consider alternative living arrangements in any county of the state.

A commenter stated that stakeholders from the community into which the individual will be moving must be included as the IDT develops the individual's plan and gave examples of disability groups that could be included. The department responds that it believes the better policy is to give the individual or LAR the choice as to third party involvement and not require such involvement. The department responds that the identity of persons invited to the IDT meeting, other than those persons designated by the program provider, is the sole prerogative of the individual or LAR. Therefore, the department declines to make the requested revision.

Two commenters requested the addition of language to subsection (c) and to the instructions for using the living options instrument specifying that if the individual or LAR prefers no further discussion of alternative living arrangements after the first two sections of the living options instrument are completed, the IDT must skip the other sections and go directly to the "deliberations/recommendations section." The commenters stated that such language is necessary to ensure everyone is aware that every section on the form does not have to be completed. The department responds that the Community ICF/MR Living Options instrument is intended to provide general guidelines and suggested topics for exploration by the IDT when living options are discussed, unlike the more prescriptive State MR Facilities Living Options instrument. The department chooses not to mandate prescriptive requirements for non-state operated ICF/MR providers as it does for state MR facilities and declines to revise the instrument as requested.

Two commenters stated that the uniform training guidelines referenced in the instructions to the living options instrument that the program provider is required to present to staff who participate in IDT meetings must not include provisions such as those contained in the Texas Community Integration Collaborative proposal developed by Advocacy, Inc., the Texas Planning Council for Developmental Disabilities, and the Texas Universities Affiliated Program for individuals in state schools and nursing homes. The department responds that the proposal referenced by the commenters has not been approved at this time by either the department or the Texas Health and Human Services Commission. Any formal training of program providers regarding implementation of this rule and administration of the Living Options instrument will be provided by the department.

The same two commenters requested clarification of why the department is requiring a facility to have a plan for resolving conflicts about living options recommendations, and stated that any conflict resolution process must not be used by the facility to overturn the individual or LAR's right to choice. The department responds that the Community ICF/MR Living Options instrument was adapted from the more prescriptive instrument required for use in state MR facilities. Each state MR facility is required to have a process in place for resolving conflicts between IDT members when the individual does not have an LAR and is not able to provide meaningful input or legally adequate consent to living options decisions. Different circumstances exist for non-state operated providers in the ICF/MR Program. Therefore, the department will eliminate reference to the conflict resolution requirement in the instructions for the Community ICF/MR Living Options instrument.

The new section is adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental

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

§406.311. Living Options.

(a) The following words and terms, when used in this section, shall have the following meanings:

(1) Facility -- An intermediate care facility for persons with mental retardation or a related condition, as described in 42 Code of Federal Regulations, §440.150, other than a state mental retardation facility operated by the department.

(2) Individual -- A person enrolled in the ICF/MR program and residing in a facility.

(3) IDT (interdisciplinary team) -- A group of people assembled by the facility who possess the knowledge, skills, and expertise to develop an individual's Individual Program Plan, including mental retardation professionals and paraprofessionals and other concerned persons whose inclusion is requested by the individual or LAR.

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

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

(b) At least annually or upon the request of an individual or the individual's LAR, the IDT must discuss living options with the individual or LAR using the Community ICF/MR Living Options instrument, copies of which are available on the department's website at www.mhmr.state.tx.us/CentralOffice/Medicaid/i.html or by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) During the discussion, the facility must use information obtained from the MRA in whose local service area the facility is located to inform the individual or LAR of the different types of alternative living arrangements.

(2) The facility must document the discussion in the IDT summary and file the summary in the individual's record.

(3) If the individual or the individual's LAR expresses interest in an alternative living arrangement, the facility must send a copy of the IDT summary to the MRA in whose local service area the facility is located.

(c) If an MRA receives an IDT summary, the MRA must:

(1) contact the individual or the individual's LAR to discuss the alternative living arrangements in which the individual or LAR has expressed an interest; and

(2) determine if the individual or the individual's LAR is interested in seeking an alternative living arrangement in another MRA's local service area and, if so, notify the MRA for that local service area.

(d) The MRA for the local service area in which the individual or LAR is interested in seeking an alternative living arrangement must:

(1) enter on the Client Assignment and Registration (CARE) system the individual's name and the specific type of service requested if that service will not be available within 30 calendar days of the date of request; and

(2) assist the individual in accessing the service requested when it becomes available.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007903

Andrew Hardin

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: December 3, 2000

Proposal publication date: August 11, 2000

For further information, please call: (512) 206-5232



CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES SUBCHAPTER L. MEDICAID REHABILITATIVE SERVICES

25 TAC §§419.453, 419.455 - 419.459, 419.464, 419.465

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§419.453, 419.455-419.459, 419.464, and 419.465 of Chapter 419, Subchapter L, governing Medicaid rehabilitative services, without changes to the proposed text as published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4274). Changes proposed to §419.462 were not adopted.

The amendments modify the definition of "on-site" to accurately describe a location at which day programs can be provided. The amendments also state that a Medicaid provider cannot provide more than one rehabilitative service to an individual at the same time and on the same day; describe the residential and nonresidential locations at which day programs can be provided; reference the rules governing Medicaid fair hearings; and update the references section. Although amendments to §419.462 were proposed, they are not adopted because other changes in the rule made the proposed language unnecessary.

Written comment on the proposal was received from Life Resource in Beaumont.

Regarding proposed new subparagraph §419.462(f)(11)(C), one commenter expressed concern that proposed language stating

services provided to patients of a hospital are not reimbursed as rehabilitative services was inconsistent with a ruling by the Health Care Financing Administration (HCFA). The commenter explained that, while "generally true, it is not true for units with 16 or fewer beds." The commenter stated that "a ruling by HCFA allows rehabilitative services billing as long as the institution was not an Institution for Mental Diseases (IMD)," which by definition excludes facilities with 16 or fewer beds. The department responds that it may prohibit reimbursement for rehabilitative services provided in an inpatient hospital setting, which could include a facility with 16 or fewer beds. However, because this prohibition is set forth in §419.462(f)(9), §419.462(f)(11)(C) will not be adopted.

Regarding the locations at which day programs for skills training and maintenance can be provided, the commenter recommended allowing day programs for skills training and skills maintenance to be provided in the community to complement and enhance the skills focused on in the day program. The department responds that services provided in a community setting (i.e., community support services) are more effective when delivered one-on-one or in a small group. The department declines to add the recommended language because enhancing and reinforcing skills focused on in a day program can be provided in the community as a community support service.

The sections are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; the Texas Health and Safety Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resource Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. HHSC has delegated to TDMHMR the authority to operate the Medicaid program for rehabilitative services.

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

Filed with the Office of the Secretary of State on November 8, 2000.

TRD-200007807

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: November 28, 2000

Proposal publication date: May 12, 2000

For further information, please call: (512) 206-4581



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER P. NEGOTIATION AND MEDIATION OF A CLAIM OF BREACH OF CONTRACT

28 TAC §§1.1801-1.1823

The Commissioner of Insurance adopts new §§1.1801 - 1.1823 concerning the negotiation and mediation of certain breach of contract claims asserted by contractors against the department. Sections 1.1801 - 1.1823 are adopted without changes to the proposed text as published in the September 15, 2000 issue of the *Texas Register* (25 TexReg 9172) and will not be republished.

The new sections are necessary to establish procedures for negotiation and mediation in accordance with Section 9 of House Bill 826, 76th Leg. R.S., Chapter 68 (1999), codified at Government Code, Chapter 2260. The statute requires that the department adopt rules to govern the negotiation and mediation of certain claims for breach of contract.

The new sections set forth the procedures relating to the negotiation and mediation of certain breach of contract claims. Section 1.1801 states that the purpose of the rules is the implementation of Government Code, Chapter 2260. Section 1.1802 states that the rules do not apply to certain types of contracts, which is based on model rules adopted by the Office of the Attorney General and published in the March 31, 2000 issue of the *Texas Register* (25 TexReg 2833). Section 1.1803 contains the definitions of terms in the rules. Section 1.1804 indicates that the procedures in the rules are prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260. Section 1.1805 states that the provisions do not waive sovereign immunity to suit or liability.

Section 1.1806 sets out the procedures for a contractor to file a claim with the department. Section 1.1807 sets out the procedures for the department if asserting a counterclaim against the contractor. Section 1.1808 states the duty of the parties to negotiate. Section 1.1809 explains the timetable or time periods for negotiation. Section 1.1810 describes the conduct of negotiation. Section 1.1811 requires that the parties disclose their settlement approval procedures prior to negotiations. Section 1.1812 provides that an agreement to settle a claim must be in writing, signed by representatives of the contractor and the department with authority to bind each party. Section 1.1813 provides that each party is responsible for its own costs incurred in a negotiation.

Section 1.1814 describes the process by which a contractor may request a contested case hearing on an unresolved claim. Section 1.1815 describes the timetable for mediation of a claim. Sections 1.1816 through 1.1823 describe the mediation process and procedures.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Government Code §2260.052 and Insurance Code §36.001. Section 2260.052(c) of the Government Code provides that each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim of breach of contract. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance.

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

Filed with the Office of the Secretary of State on November 7, 2000.

TRD-200007797

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 27, 2000

Proposal publication date: September 15, 2000

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



CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

The Commissioner of Insurance adopts the repeal of Subchapter E, §§11.401-11.409, concerning the licensing and regulation of HMO agents and §11.1701 concerning the existence of the approved nonprofit health corporation advisory committee. The repeal of Subchapter E, §§11.401-11.409, and §11.1701 is made without changes to the proposal as published in the September 22, 2000, issue of the *Texas Register* (25 Tex Reg 9413) and will not be republished.

The repeal of Subchapter E, §§11.401-11.409, is necessary because HB 219 passed by the 75th Legislature created new licensing statutes that replaced the statutes that were the basis for Subchapter E and rules regarding separate licensing of these types of agents are no longer necessary. The repeal of §11.1701 is necessary because it was implemented under Article 21.52F Insurance Code which established the nonprofit health corporation advisory committee and provided that it would serve until December 31, 1995, unless extended by a Commissioner's Order. An extension was not issued and the committee has expired, thus making the section no longer necessary.

The repeal will result in the elimination of sections which are no longer needed, as well as assist in streamlining the rules of the department by the deletion of unnecessary rules.

No comments were received.

SUBCHAPTER E. LICENSING AND REGULATION OF HMO AGENTS

28 TAC §§11.401 - 11.409

The repeal is adopted under the Insurance Code Articles 20A.04, 20A.22, 21.52F, and §36.001. Article 20A.04 provides that the Commissioner may promulgate such reasonable rules as necessary to require that a health maintenance organization, after receipt of its certificate of authority, submit its modifications or amendments to the Commissioner for approval or information only. Article 20A.22 provides that the Commissioner may promulgate such reasonable rules as are necessary and proper to carry out the provisions of the Health Maintenance Organization Act. Article 21.52F provides that the Commissioner shall adopt rules to implement this article concerning certification of certain nonprofit health corporations. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007873

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 30, 2000

Proposal publication date: September 22, 2000

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



SUBCHAPTER R. APPROVED NONPROFIT HEALTH CORPORATIONS

28 TAC §11.1701

The repeal is adopted under the Insurance Code Articles 20A.04, 20A.22, 21.52F, and §36.001. Article 20A.04 provides that the Commissioner may promulgate such reasonable rules as necessary to require that a health maintenance organization, after receipt of its certificate of authority, submit its modifications or amendments to the Commissioner for approval or information only. Article 20A.22 provides that the Commissioner may promulgate such reasonable rules as are necessary and proper to carry out the provisions of the Health Maintenance Organization Act. Article 21.52F provides that the Commissioner shall adopt rules to implement this article concerning certification of certain nonprofit health corporations. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007874

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 30, 2000

Proposal publication date: September 22, 2000

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER C. SPILL RESPONSE

31 TAC §19.36, §19.37

The General Land Office (GLO) adopts amendments to §19.36 relating to Disposal and §19.37 relating to Completion of Response. These rules concern the disposal of waste generated during an oil spill cleanup and the requirement for responsible persons to file a written report after all response operations are completed. Because no changes have been made to these sections as proposed in the *Texas Register* on August 4, 2000 (25 TexReg 7322-7323), they will not be republished.

Section 19.36(a) requires that waste generated during an oil spill cleanup be disposed of only at permitted facilities. Responsible parties that generate waste are solely responsible for determining which disposal facilities have all required permits to dispose of the waste. Responsible parties will not be required to routinely report on waste disposal to the GLO. The GLO has determined that the regulatory requirements administered by other state and federal agencies have proven adequate for ensuring that waste generated during an oil spill is disposed of in accordance with those regulations. Section 19.36(d) gives the GLO discretionary authority to require a responsible party to provide written documentation of disposal activities. If the GLO invokes this discretionary authority, the responsible party will be given written notification and a deadline for submitting the disposal information to the agency.

Section 19.37(b) specifies that a responsible party must file a written report with the GLO. The report is due the earlier of 60 days after the state on-scene coordinator directs the responsible party to complete the report or 60 days after the state on-scene coordinator declares the response to be complete. The state on-scene coordinator will provide forms for this report to responsible parties. The required information to be reported is specified in amended §19.37(b)(1)-(7). The GLO especially encourages responsible parties to devote adequate attention to and fully report on the pollution prevention actions that are listed in §19.37(b)(7)(A)-(F). The GLO believes rigorous post-spill analysis will result in fewer unauthorized discharges.

Comments on the proposed rule changes were submitted by the deadline by the American Waterways Operators and Kirby Corporation. Both commenters expressed support for the regulations as proposed because the regulations reduce reporting requirements and the paperwork burden on the regulated community.

In accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., the GLO has determined that this rulemaking concerns an action subject to the Texas Coastal Management Program (CMP). The preamble to the proposed rules stated that the GLO has determined these rules are consistent with the goals and policies of the CMP and asked for comments on that consistency determination. No comments on the consistency determination were received during the public comment period.

The GLO adopts amendments to §19.36, and §19.37 pursuant to the Oil Spill Prevention and Response Act of 1991, Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007883

Larry Soward
Chief Clerk

General Land Office

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-9129



SUBCHAPTER E. VESSELS

31 TAC §§19.60-19.63

The General Land Office ("GLO") adopts amendments to §19.60 relating to Applicability, Definitions, and Exemptions, §19.61 relating to Vessel Response Plans, §19.62 relating to Financial Responsibility, and §19.63 relating to Entry into Port. No changes have been made to §19.60 and §19.62; therefore, the text of these regulations will not be republished. Section 19.61 and §19.63 are adopted with changes from the proposed sections in the August 4, 2000, edition of the *Texas Register* (25 TexReg 7323-7329). Section 19.64 relating to Vessel Operations, which was proposed as a new rule has been withdrawn. Notice of withdrawal of §19.64 is in the "Withdrawn" section of this edition of the *Texas Register*.

Section 19.60 is a general applicability provision that mirrors §40.114 of the Oil Spill Prevention and Response Act of 1991, Natural Resources Code, Title 2, Chapter 40 ("OSPR"). The general applicability provision replaces the former three-tiered classification of vessels. Section 19.60(b) defines terms applicable to this subchapter, including new definitions for "authorized person," "official number," and "qualified individual." The definition of "vessel" is the same as the definition of that term in OSPRA and no longer includes the categorizations for "OPA," "IMO," and "OSPR" vessels. Section 19.60(c) gives the GLO authority to grant an exemption from compliance with any requirement in Subchapter E, if the owner or operator of a vessel makes a request of and provides appropriate supporting documentation to the GLO. Exemptions should only be sought for vessels involved in highly unusual or emergency situations. Exemptions are not meant for vessels involved in their normal activities in Texas coastal waters.

Section 19.61 requires owners or operators of a vessel to which these regulations apply to prepare and maintain a vessel response plan, but they are not required to submit the plan to the GLO. Instead of complete plans, some regulated vessels will be required to submit to the GLO limited information that will be useful to the GLO if the vessel is involved in an actual or threatened unauthorized discharge.

Section 19.61(a) specifies the minimum information that must be included in all vessel response plans. Vessel response plans that have been approved by the U.S. Coast Guard or under the authority of Regulation 26 of MARPOL satisfy the requirements of this section. Owners or operators of manned vessels are required to maintain a current plan aboard the vessels. Owners or operators of unmanned vessels do not need to maintain a current plan aboard their unmanned vessels; instead, they can maintain the plan at a primary business location, so long as current information on spill prevention and response procedures in §19.61(a)(1)(G) is kept aboard the vessels.

A grammatical change has been made to §19.61(b)(1), the applicability section. The minor change clarifies that owners and operators are required to submit limited information to the GLO for each vessel that is: 1) required by the Oil Pollution Act, 33 U.S.C.A. §§2701-2761 ("OPA") to have a current vessel response plan aboard the vessel; or 2) in excess of 400 gross tons and required by the International Maritime Organization to have a current shipboard oil pollution emergency plan (SOPEP) aboard the vessel. The information that owners or operators must submit to the GLO, specified in §19.61(b)(2), will assist the GLO in planning for and responding to accidental discharges from these vessels. Section 19.61(b)(3) allows the information to be submitted to the GLO in writing, by facsimile, or by using the Oil Spill Division's link on the GLO's website (<http://glo.state.tx.us/oilspill>). The GLO strongly encourages owners and operators to submit the information through the GLO's website. Submitting the information in this manner should be quick and easy, and the administrative costs to the GLO are significantly reduced. GLO Form OS-004, which can also be used to submit the information, was published in the Tables and Graphics section of the August 4, 2000, edition of the *Texas Register* (25 TexReg 7365) when these regulations were proposed. No changes have been made to this form, so it will not be republished.

Section 19.62 requires owners and operators of vessels to establish and maintain evidence of financial responsibility according to the requirements of federal law. This section paraphrases OSPRA §40.201(a), which requires vessel owners and operators to establish and maintain evidence of financial responsibility pursuant to federal law. For example, OPA §2716 requires vessel owners and operators to maintain financial responsibility. Vessel owners and operators that establish and maintain evidence of financial responsibility according to OPA's standards satisfy the requirement in §19.62.

In response to comments on the proposed section, §19.63 is adopted without the proposed change to add §19.63(b)(6), which would have given the GLO the authority to require vessels to report their arrival and departure times to the GLO. The proposed amendment to §19.63(c), which would have given the GLO explicit authority to require a vessel to remain at a Texas port or anchorage if the GLO determines that movement of the vessel threatens an unauthorized discharge of oil into Texas coastal waters, has also been deleted. Current §§19.63(c)-(f) will be deleted as proposed. The title of §19.63 will remain "Entry into Port" and will not be changed to "Entry into Port and Movement" as proposed. The net effect of the adopted changes to §19.63 is that subsections (c)-(f) are deleted.

Comments on the proposed rule changes were received by the deadline from American Commercial Lines LLC, the American Waterways Operators, Blessy Marine Services, Inc., Buffalo Marine Service, Inc., Canal Barge Company, Inc., Cenac Towing Company, Inc., Eckstein Marine Service, L.L.C., Kirby Corporation, LeBeouf Bros. Towing Co., Inc., Power Offshore Services, Inc., Sea Mar Management, Inc., and Southern States Offshore, Inc. The comments submitted cannot be classified generally as either in favor of or in opposition to the proposed regulations, since all the commenters favored some of the proposed regulations and opposed others.

Several commenters expressed their support for the reduced reporting provisions of §19.61. They were in favor of deleting the requirement to submit entire vessel response plans to the GLO.

The GLO thanks these commenters for their support of the reduced reporting requirements, which will also reduce the administrative burden on the agency.

Several comments were received on proposed §19.63(b)(6), which would have given the GLO discretionary authority to require vessel owners and operators to report the times their vessels would arrive at and depart from Texas ports. The GLO agrees with these commenters that this requirement could be burdensome to both the regulated community and the GLO. The GLO has analyzed its need to obtain this information and determined that this regulation is not currently needed. It has not been adopted, so no changes have been made to §§19.63(a) and (b).

Several commenters asked the GLO to remove the requirement in §19.63(c) that would have given the GLO explicit regulatory authority to require a vessel to remain at port or an anchorage if the GLO determines that movement of the vessel presents a threat of an unauthorized discharge. This proposed amendment has been deleted.

Many comments were received about proposed §19.64, which would have required vessel owners and operators to comply with all applicable federal laws and regulations concerning the carriage and transfer of fuel and oil. The commenters contend this regulation is overly broad. The GLO agrees the proposed regulation should be more specific; therefore, it has been withdrawn until the GLO is ready to specify more clearly the laws and regulations with which vessel owners and operators are expected to comply.

Section 2001.029 of the Administrative Procedure Act requires a state agency to hold a public hearing if requested by at least 25 persons or an association having at least 25 members. Fewer than 25 persons requested a public hearing during the public comment period; however, the American Waterways Operators ("AWO"), an association having more than 25 members, did submit a written request for a public hearing. Subsequent to receiving this request, the GLO contacted an AWO representative to discuss the regulations to be adopted. Because of changes to the proposed regulations that addressed the concerns of the AWO and its members, the AWO wrote a letter to the GLO rescinding its request for a public hearing. No public hearing on the proposed regulations was held.

In accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., the GLO has determined that this proposed rulemaking concerns an action subject to the Texas Coastal Management Program (CMP). The preamble to the proposed rules stated that the GLO has determined that these rules are consistent with the goals and policies of the CMP and asked for comments on the consistency determination. No comments on the consistency determination were received during the public comment period.

The GLO adopts amendments to §§19.60-19.63 pursuant to the Oil Spill Prevention and Response Act of 1991, Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

§19.61. *Vessel Response Plans.*

(a) Vessel Response Plan Requirements

(1) Owners and operators of vessels subject to this subchapter are required to prepare and maintain written, vessel-specific

discharge prevention and response plans. A vessel response plan approved by the U.S. Coast Guard or a shipboard oil pollution emergency plan (SOPEP) approved under Regulation 26 of MARPOL satisfies the requirements of this section. A current copy of the plan must be maintained aboard each vessel. Owners and operators of unmanned vessels can satisfy the requirements of this section by maintaining the plan at a primary business location and maintaining the information in §19.61(a)(1)(G) aboard the unmanned vessel. The vessel-specific discharge prevention and response plan shall include, at a minimum, the following information:

(A) How to contact the owner and operator, including physical and mailing addresses, a telephone number that is answered 24 hours a day, and a 24-hour fax number. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator.

(B) The person(s)-in-charge, qualified individual(s), or authorized person(s).

(C) Procedures for vessel personnel to make required reports to immediately notify regulatory agencies of unauthorized discharges or threatened discharges of oil.

(D) The total vessel capacity for fuel and oil.

(E) The vessel's official number.

(F) If applicable, a copy of the Coast Guard Vessel Response Plan approval letter or SOPEP approval letter under Regulation 26 of Annex I of MARPOL.

(G) Spill prevention and response procedures, including:

(i) shutting down operations;

(ii) securing the source of the spill;

(iii) assessing the spill situation and evaluating for safety hazards to vessel personnel;

(iv) immediate actions for reducing the potential for future spillage;

(v) assessing the condition of the vessel and taking action to prevent further vessel damage;

(vi) notifying regulatory agencies, local officials, and private property owners impacted by an unauthorized discharge; and

(vii) anticipated actions for abating, containing, and cleaning up an unauthorized discharge of oil.

(2) Owners and operators of unmanned vessels subject to this subchapter shall maintain the following information aboard each unmanned vessel:

(A) How to contact the owner and operator, including physical and mailing addresses, a telephone number that is answered 24 hours a day, and a 24-hour fax number. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator.

(B) Qualified individual(s), authorized person(s), or preparedness manager(s).

(C) A checklist for notification of appropriate regulatory agencies in the event of an unauthorized or threatened unauthorized discharge and pertinent information and procedures for response personnel to abate and respond to an actual spill.

(D) The total vessel capacity for fuel and oil.

(b) Submission of Information to the GLO.

(1) Applicability. This section, which requires the submittal of limited information to the GLO, applies to owners and operators of any vessel subject to regulation under Subchapter E if that vessel is: 1) required by the Oil Pollution Act, 33 U.S.C.A. §§2701-2761 ("OPA") to have a current vessel response plan aboard the vessel; or 2) in excess of 400 gross tons and required by the International Maritime Organization to have a current shipboard oil pollution emergency plan (SOPEP) aboard the vessel.

(2) Owners or operators of vessels to which this subsection applies must submit the following information to the GLO:

- (A) the name of the owner and operator;
- (B) the address of the owner and operator;
- (C) the electronic mail (email) address, if applicable;
- (D) the phone and facsimile number of the owner and operator;

(E) the qualified individual(s) or authorized person(s) for each vessel to be covered, and information on how these people can be contacted 24 hours a day;

(F) the names and official numbers of vessels to be covered by the notification;

(G) the gross tonnage of all vessels to be covered by the notification; and

(H) the total capacity for fuel and oil of each vessel to be covered by the notification.

(3) Submittal of information. The GLO has established a link on the GLO website (<http://www.glo.state.tx.us/oilspill>) for submittal of the information required in this section. Owners and operators with the capability to use the Internet and access this website should link to "Vessel Response Plans." An account can then be established by following the instructions and ensuring that information submitted is accurate and complete. Owners and operators are strongly encouraged to submit information over the GLO's website. This is the quickest and easiest way to submit the information, and it eliminates the administrative burden of GLO staff who would otherwise have to load the information. Owners or operators of vessels without the capability of submitting this information by using the GLO's website may submit the required information on GLO Form OS-004. Completed Form OS-004 can be sent to the GLO by:

(A) mail sent to Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873;

(B) facsimile sent to (512) 475-1560; or

(C) electronic mail sent to Vessel.Plan@glo.state.tx.us.

§19.63. Entry into Port.

(a) Denial of entry into port of any vessel without evidence of financial responsibility or without a discharge prevention and response plan in violation of §19.61 and §19.62 of this title (relating to Response Plans and Financial Responsibility) shall be done in cooperation with the United States Coast Guard when practicable.

(b) Before being granted entry into any port in this state, a person in charge of any vessel may be required to report or show the following:

(1) any unauthorized discharges from the vessel since leaving the last port;

(2) any mechanical or operational problem on the vessel;

(3) any denial of entry into any port during the current voyage of the vessel;

(4) that the vessel has a discharge prevention and response plan and the trained personnel and equipment to implement it as required under OSPRA and §19.61 of this title (relating to Response Plans);

(5) that the vessel has evidence of financial responsibility as required by federal law or OSPRA.

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

Filed with the Office of the Secretary of State on November 13, 2000.

TRD-200007880

Larry Soward

Chief Clerk

General Land Office

Effective date: December 3, 2000

Proposal publication date: August 4, 2000

For further information, please call: (512) 305-9129



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.182

The Comptroller of Public Accounts adopts an amendment to §3.182, concerning motor fuel transporting documents, with changes to the proposed text as published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7604).

The 76th Legislature, 1999, in Senate Bill 1547, amended Tax Code, Chapter 153, requiring additional information on shipping documents.

Subsections are being amended to add the phrase "shipping document".

Subsections are being amended to include the additional information that must be printed on a shipping document.

Comments were received from Exxon Mobil Corporation, Citgo Petroleum Corporation, Marathon Ashland Petroleum LLC, Conoco, Inc., Phillips Petroleum Company, Murphy Oil USA, Inc., Equiva Services LLC, Motiva Enterprises LLC, and Diamond Shamrock Refining and Marketing Company regarding whether information must be included on the transporting documents. A change is made to paragraph (b)(2) to require that the federal employer identification number or social security number of the carrier must be in the terminal or bulk plant operator's records and available for review if not printed on the shipping document. A change is made to paragraph (b)(8) to require that the Terminal Code Number assigned to a terminal by the United States Internal Revenue Service be printed on

the shipping document if the name and physical address of the terminal is not printed on the shipping document. A change is made to paragraph (b)(11) to require that the federal employer identification number, permit number and physical address of the purchaser or consignee must be in the terminal or bulk plant operator's records and available for review if not printed on the shipping document. A change is made to paragraph (b)(13) to require that the name of the person responsible for paying the tax, if different from the permitted supplier or distributor, must be in the terminal or bulk plant operator's records and available for review if not printed on the shipping document.

This amendment is adopted under Tax Code, §111.002, which authorizes the comptroller to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §153.004 and §153.018.

§3.182. Motor Fuel Transporting Documents.

(a) Manifest requirements. The transportation of motor fuel as cargo shall be recorded on a cargo manifest or shipping document that is issued at the time the motor fuel is delivered into a cargo tank. The manifest or shipping document shall accompany the cargo until the motor fuel is resold or removed from the cargo tank, and shall be retained for four years for audit purposes.

(b) Information required. The cargo manifest or shipping document shall be issued in not less than duplicate and shall contain the following information:

(1) the type of motor fuel being transported, and if dyed diesel fuel is being transported, a notice that states "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use";

(2) the name and the federal employer identification number or social security number of the carrier. If the federal identification number or social security number of the carrier is not printed on the cargo manifest or shipping document, that information must be in the records of the terminal or bulk plant operator and made available for review when requested;

(3) the quantity of motor fuel in gross gallons;

(4) the temperature and quantity in temperature adjusted gallons when the fuel is loaded at a terminal for export or import or when the sale of gasoline or diesel fuel must comply with §3.190 of this title (relating to Temperature Adjustment Conversion Table);

(5) the percentage of ethanol or methanol contained in the motor fuel;

(6) the types and percentages of cosolvents contained in the motor fuel, if methanol has been added;

(7) the date of loading or movement;

(8) the name and physical address or Terminal Code Number assigned by the United States Internal Revenue Service of the terminal or bulk plant at which the cargo was loaded;

(9) the destination of the cargo;

(10) the name of the seller, consignor, or shipper;

(11) the name, federal employer identification number, permit number if applicable, and physical address of the purchaser or consignee (the federal identification number, permit number, and physical address of the purchaser or consignee must be in the records of the terminal or bulk plant operator and available for review if not printed on the shipping document);

(12) the method of transportation:

(A) if by truck, the license or unit number;

(B) if by barge or boat, the name of the vessel;

(C) if by railway, the rail car number and initial;

(13) the name of the person responsible for payment of the tax, if different from the permitted supplier or distributor. If this information is not printed on the manifest or shipping document, it must be in the records of the terminal operator and made available for review when requested;

(14) the amount of delivery fee assessed under Water Code, §27.3574; and

(15) any other information the comptroller deems necessary for the proper administration of Tax Code, Chapter 153.

(c) Waybills or bill of lading. If a carrier transports motor fuel for which a waybill is required under the regulations of the Texas Railroad Commission, or a bill of lading is required under the regulations of the United States Department of Transportation, or if other similar documentation is required by another regulatory agency, these documents may be used in lieu of the manifest or shipping document prescribed in this section, so long as the waybill, bill of lading, or similar document lists the information described in subsection (b) of this section.

(d) Delivery of cargo manifest or shipping document. One copy of the transporting document shall be delivered to the purchaser at the time of fuel delivery, and the seller shall retain one copy. If a common carrier or contract carrier delivers the fuel, the carrier must also retain one copy.

(1) If the cargo is being loaded at different locations, a notation of the fuel loaded at each location must be made on the cargo manifest, or a separate manifest that covers the fuel or blend material loaded at each location must be issued.

(2) If the cargo is being off-loaded at various locations, then at the time the off-loading is accomplished, a notation of the fuel off-loaded shall be made on the required cargo manifest, or a customer invoice that indicates the location and amount of motor fuel that has been off-loaded at each place shall be prepared. If invoices are used instead of notations on the manifest, the invoices must be attached or cross referenced to the manifest for record purposes. The cargo manifest or a copy of the customer invoice shall be retained with the transporting vehicle until the motor fuel is removed from the cargo tank.

(3) A cargo manifest is not required on motor fuel that an end user purchases on a signed statement and transports in the user's own cargo tank.

(4) If the delivery fee assessed under Water Code, §26.3574, is not shown on the cargo manifest, it must be shown on the invoice that covers the delivery, and be cross referenced to the manifest for record purposes.

(e) Deliveries at different locations. Deliveries to the same purchaser at different locations may be construed to be single deliveries and qualify for temperature adjustment if the total of all deliveries to that customer is 5,000 gallons or more, and if:

(1) the fuel off-loaded at different locations is the same product type (gasoline or diesel fuel);

(2) the delivery is accomplished from the same cargo tank;

(3) proper notations are made on the cargo manifest or customer invoices, or delivery tickets are prepared and kept with the cargo manifest; and

(4) the off-loading occurs within a reasonable time that allows for transit from one location to another.

(f) Separate deliveries. Deliveries from more than one cargo tank are presumed to be separate deliveries. This presumption may be overcome if:

(1) the seller is unable to make the requested delivery in a single cargo tank;

(2) the delivery of all the requested fuel was completed within a reasonable time (usually within 24 hours);

(3) the customer would have been able to accept the entire amount requested at one time; and

(4) the customer has previously requested deliveries of 5,000 or more gallons of the type of requested fuel, or the customer has changed business operations and now requires deliveries of 5,000 or more gallons of the type of requested fuel. This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007848

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

Effective date: November 30, 2000

Proposal publication date: August 11, 2000

For further information, please call: (512) 463-4062



SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.316

The Comptroller of Public Accounts adopts an amendment to §3.316, concerning occasional sales and other tax-free sales, without changes to the proposed text as published in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9192).

This section is being amended to reflect changes to Tax Code, §151.310 and §151.321, enacted by the 76th Legislature, 1999, allowing for tax-free sales by certain organizations of items selling for over \$5,000. Additionally, the amendment deletes the requirement that a college or university re-certify its status to the comptroller every two years. The legislature also amended the Tax Code by adding §151.343, exempting adoption fees paid to nonprofit animal shelters. The rule name is being changed to more clearly reflect the contents of the rule.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.310, 151.321, and 151.343.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007875

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 463-3699



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) adopts amendments to §19.1104 and §19.2601 without changes to the proposed text in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9430) and will not be republished.

Justification for the amendments is to clearly state what has always been the department's interpretation of §19.2601, which is that nursing facilities are not responsible for providing specialized equipment that will only be used by one person. It was brought to the department's attention that there could be some confusion regarding what specialized equipment a nursing facility is required to provide under §19.2601. The amendments also specify that the dietary consultant hours are required on a monthly basis. The monthly basis requirement was inadvertently deleted in a prior revision to §19.1104.

The department received no comments regarding adoption of the amendments.

SUBCHAPTER L. DIETARY SERVICES

40 TAC §19.1104

The amendment is adopted under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.001- 242.268.

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

Filed with the Office of the Secretary of State on November 8, 2000.

TRD-200007818
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: December 1, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108



SUBCHAPTER AA. VENDOR PAYMENT

40 TAC §19.2601

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on November 8, 2000.

TRD-200007817
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: December 1, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108



CHAPTER 40. MEDICAID MANAGED CARE

SUBCHAPTER A. STAR+PLUS

40 TAC §40.103

The Texas Department of Human Services (DHS) adopts an amendment to §40.103 without changes to the proposed text in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9431).

Justification for the amendment is to remove the nursing home population from participation in managed care. The department has determined that this population does not benefit from the underlying rationale of managed care, i.e., preventive services and care in the home. At this time, STAR+PLUS operates only in Harris County and only those clients will be affected by this change.

The department received four written comments from the Texas Hospital Association (THA) and the Texas Association for Home Care (TAHC). A summary of the comments and the department's responses follow.

Comment: THA requested consideration of expanding the groups that are not eligible for participation in managed care to include adult Medicaid clients who are in a hospital at the time of managed care enrollment. The comments are focused on the

"span of eligibility" requirements, which are not part of the rule changes as proposed.

Response: The comments concur with the intent to remove the nursing home population from the managed care population. The comments will be provided to the Health and Human Services Commission (HHSC) and the Texas Department of Health (TDH) for consideration for changes to the Medicaid managed care policies regarding enrollment of clients.

Comment: TAHC opposed the proposed rule. The primary opposition was based on the association's view that removing Nursing Facility care from the HMO scope of service undermines the continuum of care.

Response: DHS disagrees with this comment. Individuals will continue to have access to nursing facility care as appropriate to their needs. This rule does not affect access to nursing facility care.

Comment: TAHC also contended that the change in the rule will lead to the HMO placing clients into nursing facilities as a way to reduce the HMO liability for care.

Response: DHS disagrees with this comment. The HMO is financially at risk for nursing facility costs for the first four months of placement, during which time the individual remains a member of the HMO. For Dual Eligible members, the HMO is responsible for paying the Medicare copay covered by Medicaid. For those SSI members not covered by Medicare, the HMO is responsible for the entire cost of care. The HMO does not get an increase in capitation payment during this four-month period. The member, member's doctor, and the member's family continue to be involved in the decision for nursing facility placement.

DHS will monitor SSI members who are disenrolled from STAR+PLUS as a result of nursing facility placement to ensure that alternatives were explored and members were given a choice on placement. If the state finds that HMO members are being moved into nursing facilities without community options being explored, corrective actions and sanctions will be applied.

Comment: TAHC also questioned the inclusion of Dual Eligibles, members covered by both Medicare and Medicaid, in the STAR+PLUS project, contending that integration of acute and long term care was not possible for this population.

Response: DHS disagrees with this comment. The Care Coordinators for the STAR+PLUS HMOs do seek to educate and coordinate with Medicare providers in developing plans of care for the Dual Eligible population.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.03 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007849

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: December 1, 2000
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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**PART 4. TEXAS COMMISSION FOR
THE BLIND**

**CHAPTER 159. ADMINISTRATIVE RULES
AND PROCEDURES
SUBCHAPTER A. GENERAL INFORMATION**

40 TAC §159.7

The Texas Commission for the Blind adopts new §159.7 concerning payment of shift differentials without changes to the proposed text published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8365). The section establishes the agency's system for determining positions eligible to receive shift differential payments and the rate allowed to be paid.

No comments on the proposal were received.

The rule is adopted under the authority of Human Resources Code, Title 5, Chapter 91, § 91.016, which authorizes the Commission to develop rules and implement policies allowing shift differentials to be paid to employees in the vocational rehabilitation program.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007854
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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**CHAPTER 161. APPEALS AND HEARING
PROCEDURES
SUBCHAPTER A. VOCATIONAL
REHABILITATION AND INDEPENDENT
LIVING PROGRAMS**

40 TAC §161.24

The Texas Commission for the Blind adopts the amendment of §161.24 pertaining to witness fees without changes to the proposal published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8366). The amendment updates the TAC citation included in the rule.

No comments on the proposal were received.

The amendment is proposed under the authority of Human Resources Code, Title 5, Chapter 91, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs. The proposal affects no other statute.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007852
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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**CHAPTER 163. VOCATIONAL REHABILITA-
TION PROGRAM
SUBCHAPTER C. VOCATIONAL
REHABILITATION SERVICES**

40 TAC §163.35

The Texas Commission for the Blind adopts amendments to §163.35 of the agency's vocational rehabilitation program rules pertaining to occupational licenses, tools, equipment, and initial stocks and supplies without changes to the proposed text published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8366). The amendments clarify items that are not considered as equipment and are not purchased for consumers as a part of an individualized plan for employment. The amendments also clarify that the consumer may not sell or otherwise voluntarily relinquish possession of tools and equipment provided to the consumer at state and federal expense.

No comments on the proposal were received.

The amendment is adopted under the authority of Human Resources Code, Title 5, Chapter 91, Section 91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007853
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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CHAPTER 164. INDEPENDENT LIVING PROGRAM

The Texas Commission for the Blind adopts changes to rules in Chapter 164 pertaining to administration of the Independent Living Program without changes to the proposed text published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8367-8370). These changes, most of which are technical amendments, are being adopted as a result of the agency's review of all chapter rules under its rule review plan adopted in accordance with the Appropriations Act, Article IX, 167, passed by the 75th Texas Legislature (1997), and now found in Article IX, §9-10.13, passed by the 76th Texas Legislature (1999).

Section 164.1 contains a clarified statement of the program's purpose. Section 164.2 provides updated information about the legal authority under which the program is administered. Section 164.3 contains updated definitions used in the chapter rules. Section 164.10 contains simplified application procedures. Section 164.11 contains program eligibility criteria, which conform with federal eligibility regulations. Section 164.13 contains the federal requirement that consumers be notified about the state's Client Assistance Program when the consumer is determined to be ineligible for services. Section 164.25 contains clarified rules for receiving goods and services. Section 164.26 contains rules for obtaining assistance with transportation during rehabilitation services. Sections 164.30-164.32, pertaining to an order of section, are repealed. Section 164.41 sets forth the goods and services not requiring consumer participation in their cost. Section 164.43 clarifies that the income of only those members of the family who have a legal obligation of support for the consumer will be taken into consideration in determining monthly income. Section 164.45 contains the allowed adjustments in calculating the consumer's net monthly income.

No comments on the proposals were received.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§164.1-164.3

The rules are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007855
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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SUBCHAPTER B. BASIC PROGRAM REQUIREMENTS

40 TAC §§164.10, 164.11, 164.13

The amendments and new section are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007857
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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40 TAC §164.11

The repeal is adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007856
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611

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SUBCHAPTER C. INDEPENDENT LIVING SERVICES

40 TAC §§164.25, §164.26

The amendments are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007858

Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611



SUBCHAPTER D. ORDER OF SELECTION FOR INDEPENDENT LIVING SERVICES

40 TAC §§164.30-164.32

The repeal of this subchapter and all rules therein are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007859
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611



SUBCHAPTER E. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§164.41, 164.43, 164.45

The amendments are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011(h), which allows the agency to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007860
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611



CHAPTER 169. BLIND AND VISUALLY IMPAIRED CHILDREN'S PROGRAM SUBCHAPTER A. GENERAL INFORMATION

40 TAC §169.3

The Texas Commission for the Blind adopts the amendment of §169.3 pertaining to remedy of dissatisfaction in the Blind and Visually Impaired Children's program without changes to the proposal published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8371). The rule updates the reference to a section of the agency's rules that had subsequently been repealed and adopted under a new section number.

No comments were received on the proposal.

The amendment is adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.018, which authorizes the Commission to promulgate rules establishing methods for directing complaints to the agency.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007850
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: November 30, 2000
Proposal publication date: August 25, 2000
For further information, please call: (512) 377-0611



CHAPTER 172. ADVISORY COMMITTEES AND COUNCILS

40 TAC §172.3

The Texas Commission for the Blind adopts the amendment of §172.3 pertaining to Committees and Councils Established by the Board without changes to the text proposed in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8371). In compliance with Government Code, §2110.008, pertaining to Duration of Advisory Committees, the Commission has determined that regional advisory committees continue to provide the agency with valuable information and feedback about local consumer services. The committees are being extended until 2004.

No comments were received on the proposal.

The amendment is adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

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

Filed with the Office of the Secretary of State on November 10, 2000.

TRD-200007851

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Effective date: November 30, 2000

Proposal publication date: August 25, 2000

For further information, please call: (512) 377-0611



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance or his designee at a public hearing under Docket No. 2475 scheduled for December 18, 2000 at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin Texas will consider amendments proposed by the staff of the Workers' Compensation Division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for workers' Compensation and Employers' Liability Insurance (Manual). The purpose of these amendments to the Manual is to establish a new classification for residential domestic workers whose workers' compensation premium is based on payroll, to amend Rule XV to include the new classification and to make editorial changes to Rule XV. This change is necessary in order to establish a separate classification for residential domestic workers whose workers' compensation premium is based on payroll. Currently, the Manual allows the premium for residential domestic workers to be calculated on either a per capita basis or a payroll basis. However, there is not a separate classification to use if the premium for residential domestic workers is calculated on a payroll basis rather than on a per capita basis. Adoption of this recommended change will provide a classification for residential domestic workers regardless of whether the premium is determined on a per capita basis or a payroll basis.

The proposed changes add Code 0923 Domestic Workers - Residences: Payroll Basis to both the Alphabetic and Numeric Classification Sections of the Manual. In addition there are proposed changes to Rule XV - Domestic Workers - Residences to add a reference to Code 0923, to clarify that both Codes 0913 and 0923 are "a" rated classifications, and to make editorial changes to the rule that are necessary to eliminate conflict or confusion.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.60 and 5.96.

A copy of the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the proposed amendments, please contact Ms. Sylvia Gutierrez (512) 463-6327, (refer to Ref. No. W-1100-30-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on December 18, 2000. The written comments should be directed to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be sent to Nancy Moore, Deputy Commissioner, Workers' Compensation, Texas Department of Insurance, P. O. Box 141904, MC 105-2A, Austin, Texas 78714-9104. Public testimony at the hearing on December 18, 2000 is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government code, Chapter 200a (Administrative Procedure Act).

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

TRD-200007918

Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 13, 2000



The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2476 on December 18, 2000, at 1:30 p.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of a revised table concerning the Expected Loss Rates and Discount Ratios (ELR and D-ratios) by classification used in experience rating, which is contained in the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual), and an amendment to the Texas Workers' Compensation Classification Relativities Table (Relativities Table) to add Code 0923 and to indicate that the code will be "a" rated.

In its petition, the staff proposes the consideration and adoption of a revised table concerning the ELRs and D-ratios used in experience rating and an amendment to the Relativities Table so that they will be consistent with amendments to the Manual proposed by the staff of TDI's Workers' Compensation division. The staff of TDI's Workers'

Compensation division proposed to establish a new classification for residential domestic workers whose workers' compensation premium is based on payroll. This classification would be in addition to an existing classification for residential domestic workers whose workers' compensation premium is proposed to be determined solely on a per capita basis. If the proposal of the staff of TDI's Workers' Compensation division is adopted, it will be necessary to make the amendments proposed by this petition.

The staff requests that the proposed revised Table II of the Manual and the amendment to the Relativities Table be adopted and made effective for all workers' compensation policies with an effective date on or after January 1, 2001.

The Commissioner has jurisdiction of this matter pursuant to the Texas Insurance Code, Articles 5.60 and 5.96.

Copies of the full text of the staff petition and the proposed revised tables are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. W-1100-31-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Lynda Nesenholtz, the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

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

TRD-200007978
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 15, 2000



Final Action on Rules

The Commissioner of Insurance (Commissioner) adopts amendments to the Texas Automobile Rules and Rating Manual (Manual) to conform the rules to the changes adopted in Commissioner's Order No. 00-0909 in regard to the Private Passenger Personal Injury Protection (PIP) and Medical Payments (MP) coverages. The Manual rules were proposed by Department staff in a petition filed on October 4, 2000 (Ref. No. A-1000-24-I). Notice of the proposal was published in the October 13, 2000 issue of the *Texas Register* (25 TexReg 10379). The Manual rules were considered at a public hearing on November 9, 2000 at 10:00 a.m., under Docket No. 2469, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

The Commissioner adopts the proposal as noticed in the Texas Register and modified as explained herein, amendments to the Manual to clarify the rating methodology insurers should use when calculating PIP and MP insurance rates for the following vehicle classes: named non-owner; motor homes; all-terrain vehicles; antique, collectible and

special interest automobiles; dune buggies; golfmobiles; golf carts; and motorcycles.

The Commissioner adopts amendments to each section of the Manual as follows:

(A) In Rule Section IV, Manual Rule 80, Named Non-owner Coverage, subsection I. E. is amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(B) In Rate Section IV, Manual Rule 77, Miscellaneous Type Vehicles, subsections A. 1. b. (2), B. 1., C. 1., D. 2. a. and E. 1. are amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(C) In Rate Section VII, Manual Rule 120, All-Terrain Vehicles, subsections A. 1. and B. 1. are amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(D) In Rate Section VII, Manual Rule 123, Antique, Collectible and Special Interest Automobiles (Class Code 9620), subsection B. 2. is amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(E) In Rate Section VII, Manual Rule 129, Dune Buggies, subsections B. 1. a. and B. 2. a. are amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(F) In Rate Section VII, Manual Rule 132, Golfmobiles (Class Code 9460), subsections B. 1. b. and B. 2. b. are amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

(G) In Rate Section VII, Manual Rule 136, Motorcycles, subsections I. A. 2. and I. A. 3. are amended to conform the rule to the changes adopted in Commissioner's Order No. 00-0909 for PIP and MP.

At the hearing, Staff suggested changes to its proposal as published in the Texas Register. More specifically, staff requested three amendments to the exhibits included in its petition filed on October 4, 2000, and referred to in the proposal. In Exhibit 1 to the petition, an editorial change is necessary for greater clarity. This change to Rule 80.I.E. inserts the word "rate" after "class 3". In the petition's Exhibit 2, page 2, two of the rates shown are amended to reflect the changes in the rates as of November 1, 2000, after the filing of the petition. The revised exhibit shows \$8 instead of \$9 for bodily injury and shows \$19 instead of \$20 for combined limit liability for golf carts under Rule 77.E.1.

On August 10, 2000, the Commissioner of Insurance in Order No. 00-0909, in accordance with the statutory requirements of the Insurance Code Article 5.101, made determinations relating to benchmark rates and flexibility bands for private passenger and commercial automobile insurance. At the time, the Commissioner ordered changes in the rating structure for private passenger PIP and MP. Under the previous rating structure, a premium was not individually calculated; instead it was determined by the placement of an associated Bodily Injury liability premium into one of six categories. Pursuant to Commissioner's Order No. 00-0909, premiums for PIP and MP are now independently calculated by applying a driver class differential to a territorial base rate, an approach similar to that currently used for the Bodily Injury and Property Damage liability coverages. Because several rules in the Manual rely on the previous PIP and MP rating structure, it is necessary to amend these rules to conform to the rating structure implemented by the order. Amending these rules provides insurers with a clear rating methodology to use when calculating automobile insurance rates.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles, 5.10, 5.96, 5.98 and 5.101.

The Manual rules as adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. Ref. No. A-1000-24-I and are incorporated by reference into Commissioner's Order No. 00-1248.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

This agency hereby certifies that the adopted Manual rules have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to Rule 80 in Rule Section IV; Rule 77 in Rate

Section IV; Rule 120 in Rate Section VII; Rule 123 in Rate Section VII; Rule 129 in Rate Section VII; Rule 132 in Rate Section VII; and Rule 136 in Rate Section VII of the Texas Automobile Rules and Ratings Manual as described herein, are adopted to become effective the later of a) December 16, 2000, or b) the date that applies to an insurer's required November 1, 2000 rate filing under the Insurance Code, Article 5.101, Section 3(e) and applicable to policies that become effective on or after such date.

TRD-200007994

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 15, 2000



—REVIEW OF AGENCY RULES—

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter K (relating to Hotel Occupancy Tax), Subchapter N (relating to County Sales and Use Tax), Subchapter O (relating to State Sales and Use Tax, §§3.281-3.301), Subchapter P (relating to Municipal Sales and Use Tax), Subchapter R (relating to Transit Sales and Use Tax), Subchapter AA (relating to Automotive Oil Sales Fee), Subchapter BB (relating to Battery Sales Fee), Subchapter DD (relating to Oil Field Cleanup Regulatory Fee), Subchapter EE (relating to Boat and Motor Sales and Use Tax), and Subchapter II (relating to Telecommunications Infrastructure Fund Assessment). This review and consideration is being conducted in accordance with Government Code, §2001.039. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

In accordance with the above referenced §2001.039, the comptroller will accept comments regarding whether the reason for adopting or readopting each of these rules continues to exist. The comment period will last for 30 days beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review Subchapters K, N, O, P, R, AA, BB, DD, EE and II may be submitted to Jesse Ancira, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200007879

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

Filed: November 10, 2000



General Land Office

Title 31, Part 1

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to

Review the rules found in 31 TAC, Part 1, Chapter 2 relating to Rules of Practice and Procedure.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007837

Larry Soward

Chief Clerk

General Land Office

Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 7 relating to Surveying.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as

a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007836
Larry Soward
Chief Clerk
General Land Office
Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 15 relating to Coastal Area Planning.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007973
Larry Soward
Chief Clerk
General Land Office
Filed: November 15, 2000



In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 16 relating to Coastal Protection.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007974
Larry Soward
Chief Clerk
General Land Office
Filed: November 15, 2000



In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 17 relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007835
Larry Soward
Chief Clerk
General Land Office
Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 25 relating to Beach Cleaning and Maintenance Assistance Program.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office,

1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007975

Larry Soward

Chief Clerk

General Land Office

Filed: November 15, 2000



Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 279, Water Quality Certification. This review of Chapter 279 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §§9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 279 governs the issuance of state water quality certifications under the federal Clean Water Act (the Act), §401, codified at 33 USC §1341. The Act, §401(a)(1) requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The chapter establishes procedures for public notice and the review of applications for water quality certification.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 279 continue to exist. These rules are needed for implementation by the commission of the certification and notice provisions of the Act, §401. Chapter 279, as amended, was adopted under the general powers and rulemaking authority of the Texas Water Code (TWC), §§5.102, 5.103, 5.105, and 5.120. Texas Water Code, §§26.011, 26.023, 26.027, and 26.121, which direct the commission to act to protect the quality of water in the state, also provide statutory support for this chapter.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §§9 - 10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules in Chapter 279 continue to exist. Comments may be submitted to Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239- 4808. All comments should reference Rule Log Number 2000-030-279-WT. Comments must be received in writing by 5:00 p.m., December 27, 2000. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, at (512) 239-1873.

TRD-200007992

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 15, 2000



School Land Board

Title 31, Part 4

In accordance with Section 2001.039 Government Code, the School Land Board (SLB) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 4, Chapter 154 relating to Land Sales Acquisitions and Trades.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the SLB may also determine that a specific rule may need amended to further refine the directives and goals of the SLB, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The SLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007834

Larry Soward

Chief Clerk, General Land Office

School Land Board

Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the School Land Board (SLB) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 4, Chapter 155 relating to Land Resources.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the SLB may also determine that a specific rule may need amended to further refine the directives and goals of the SLB, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The SLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007972

Larry Soward
Chief Clerk, General Land Office
School Land Board
Filed: November 15, 2000



Veterans Land Board

Title 40, Part 5

In accordance with Section 2001.039 Government Code, the Veterans Land Board (VLB) submits the following Notice of Intent to Review the rules found in 40 TAC, Part 5, Chapter 175 relating to General Rules of the Veterans Land Board.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the VLB may also determine that a specific rule may need amended to further refine the directives and goals of the VLB, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The VLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007833
Larry Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the Veterans Land Board (VLB) submits the following Notice of Intent to Review the rules found in 40 TAC, Part 5, Chapter 176 relating to Veterans Homes.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the VLB may also determine that a specific rule may need amended to further refine the directives and goals of the VLB, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The VLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007832

Larry Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: November 9, 2000



In accordance with Section 2001.039 Government Code, the Veterans Land Board (VLB) submits the following Notice of Intent to Review the rules found in 40 TAC, Part 5, Chapter 177 relating to Housing Assistance Program.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the VLB may also determine that a specific rule may need amended to further refine the directives and goals of the VLB, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The VLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200007831
Larry Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: November 9, 2000



Adopted Rule Reviews

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind has completed its review of all rules in Chapter 163 of the Texas Administrative Code in accordance with the Appropriations Act, Article IX, § 9-10.13, passed by the 76th Texas Legislature (1999).

The Board received no public comments in response to its notice of the rule review filed in the September 8, 2000, issue of the *Texas Register* (25 TexReg 9017).

The Commission finds that the reason for adopting all rules in the chapter continues to exist and they are hereby readopted without changes.

TRD-200007861
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: November 10, 2000



The Texas Commission for the Blind has completed its review of all rules in Chapter 174 of the Texas Administrative Code in accordance with the Appropriations Act, Article IX, § 9-10.13, passed by the 76th Texas Legislature (1999).

The Board received no public comments in response to its notice of the rule review filed in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9238).

The Commission finds that the reason for adopting all rules in the chapter continues to exist and they are hereby readopted without changes.

TRD-200007862
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: November 10, 2000

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 66 in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist. The TEA is proposing amendments to 19 TAC §§66.1, 66.7, 66.10, 66.21, 66.24, 66.27, 66.28, 66.36, 66.51, 66.54, 66.69, 66.78, 66.104, and 66.131, which may be found in the Proposed Rules section of this issue. This concludes the review of 19 TAC Chapter 66.

TRD-200007900
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: November 13, 2000

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 101, in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist. The TEA plans to propose revisions to 19 TAC Chapter 101 at a future date. This concludes the review of 19 TAC Chapter 101.

TRD-200007901
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: November 13, 2000

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter D, Uniform Bank Bid and Depository Contract, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 109, Subchapter D, in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to

whether the reason for adopting the rules continues to exist. The TEA is proposing amendments to 19 TAC §109.51 and §109.52, which may be found in the Proposed Rules section of this issue. This concludes the review of 19 TAC Chapter 109.

TRD-200007902
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: November 13, 2000

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Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission adopts the review of the following sections of Chapter 535 (§§535.71-535.73, §535.81), Provisions of The Real Estate License Act, in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167. In conjunction with this review, the agency amended §§535.71-535.73, concerning mandatory continuing education. The adopted amendments were published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3254). The agency has determined that with these changes, the reasons for adopting the chapter continue to exist.

TRD-200007827
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: November 9, 2000

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State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the *Texas Register* (25 TexReg 5697) on July 9, 2000, the State Securities Board (Board) has reviewed and considered for re-adoption, revision, or repeal, all sections of the following chapter of Title 7, Part VII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature (Section 167), and Texas Government Code, Section 2001.039 (Section 2001.039): Chapter 133, Forms.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts this Chapter, without changes, pursuant to the requirements of Section 167 and Section 2001.039.

No comments were received regarding the re-adoption of Chapter 133.

This concludes the review for 7 TAC Chapter 133.

TRD-200007838
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: November 9, 2000

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas A&M University, Board of Regents

Request for Proposals

The Texas A&M University System requests proposals from international growth equity managers. A Request for Proposal form must be completed in its entirety. The form consists of two parts: a questionnaire in MS Word format and a spreadsheet in MS Excel format.

To obtain the Request for Proposal form or for more information please contact: Mr. Kevin McGinnis, Manager of Banking and Investments, The Texas A&M University System, John B. Connally Building, 301 Tarrow, Room 408, College Station, Texas 77840-7896 or (979) 458-6330.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. The System reserves the right to reject any or all bids. In the event of two or more equal proposals, the System reserves the right to award the bid to the agent of its choice. Proposals must be received by 5:00 p.m. CST, on December 8, 2000.

TRD-200007993

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: November 15, 2000



Texas Bond Review Board

Biweekly Report of the 2000 Private Activity Bond Allocation Program

The information that follows is a report of the Private Activity Bond Allocation Program for the period of October 28, 2000 through November 10, 2000.

Total amount of state ceiling remaining unreserved for the \$250,551,762 subceiling for qualified mortgage bonds under the Act as of November 10, 2000: \$0

Total amount of state ceiling remaining unreserved for the \$110,242,776 subceiling for state-voted issue bonds under the Act as of November 10, 2000: \$0

Total amount of state ceiling remaining unreserved for the \$75,165,529 subceiling for qualified small issue bonds under the Act as of November 10, 2000: \$0

Total amount of state ceiling remaining unreserved for the \$165,364,163 subceiling for residential rental project bonds under the Act as of November 10, 2000: \$0

Total amount of state ceiling remaining unreserved for the \$105,231,740 subceiling for student loans bonds under the Act as of November 10, 2000: \$35,000,000

Total amount of state ceiling remaining unreserved for the \$295,651,080 subceiling for all other issue bonds under the Act as of November 10, 2000: \$0

Total amount of the \$1,002,207,050 state ceiling remaining unreserved under the Act as of November 10, 2000: \$35,788,375

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from October 28, 2000 through November 10, 2000: None

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from October 28, 2000 through November 10, 2000:

Issuer: 1) TDHCA

Description: Single Family Mortgage Revenue Bonds

Amount: \$83,511,625

Issuer: 2) Fort Bend County IDC

User: Aaron Rents, Inc.

Description: Small Issue IDB-Sugarland, Texas

Amount: \$4,200,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from October 28, 2000 through November 10, 2000: None

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from October 28, 2000 through November 10, 2000:

Issuer: 1) TDHCA

Description: Single Family Mortgage Revenue Bonds

Amount: \$3,375

Issuer: 2) Fort Bend County IDC

User: Aaron Rents, Inc.

Description: Small Issue IDB-Sugarland, Texas

Amount: \$785,000

For a more comprehensive and up-to-date summary of the 2000 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at (512) 475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200007911

Steve Alvarez

Program Administrator

Texas Bond Review Board

Filed: November 13, 2000

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Capital Area Metropolitan Planning Organization (CAMPO)

Ad Notice for Public Opinion Survey Request for Proposal

ON MONDAY, NOVEMBER 27, 2000, CAMPO WILL BE REQUESTING SEALED PROPOSALS FROM QUALIFIED BIDDERS FOR THE FOLLOWING PROJECT:

Public Opinion Survey of Austin Metropolitan Area Residents Regarding Transportation Issues (CAMPO-03-FY00)

Proposal packets may be obtained from the CAMPO Office, 2nd Floor, 1011 San Jacinto, Austin, Texas 78701. A pre-proposal conference is scheduled for Wednesday, December 6, 2000 at 10:00 a.m. in the 3rd Floor Conference Room of 1011 San Jacinto.

All proposals must be submitted to the CAMPO Office at the aforementioned address no later than 4:00 p.m. on Wednesday, December 20, 2000. **No late proposals or faxed proposals will be accepted.**

For further information, call María Caminos-Davila, at (512) 499-2529.

CAMPO HEREBY NOTIFIES ALL OFFERORS THAT IN REGARD TO ANY CONTRACT ENTERED INTO PURSUANT TO THIS ADVERTISEMENT, MINORITY BUSINESS ENTERPRISES AND HISTORICALLY UNDERUTILIZED BUSINESSES WILL BE AFFORDED EQUAL OPPORTUNITIES TO SUBMIT OFFERS IN RESPONSE TO THIS INVITATION AND WILL NOT BE DISCRIMINATED AGAINST ON THE GROUNDS OF RACE, COLOR, SEX, NATIONAL ORIGIN, OR DISABILITY IN CONSIDERATION FOR AN AWARD.

TRD-200007930

Michael R. Aulick

Executive Director

Capital Area Metropolitan Planning Organization (CAMPO)

Filed: November 14, 2000

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of November 2, 2000, through November 9, 2000. The public comment period for these projects will close at 5:00 p.m. on December 17, 2000.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Houston Authority; Location: The project is located at the northern shoreline of the Bayport Ship Channel. CCC Project No.: 00-0396-F1; Description of Proposed Action: The applicant proposes to amend Permit No. 21858 to install nine, 24-inch pipe piles to construct a staging area for barges. Type of Application: U.S.A.C.E. permit application #21858(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Brown and Root; Location: The project site is located adjacent to the Corpus Christi Ship Channel, Port Aransas, Nueces County. CCC Project No.: 00-0398-F1; Description of Proposed Action: The applicant proposes to add the Port of Corpus Christi Disposal Area 3 to the existing permit for dredged material disposal Type of Application: U.S.A.C.E. permit application #16344(05) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Mr. Gary Schwank; Location: The project site is located on the San Bernard River off County Road 471, Brazoria, Brazoria County. CCC Project No.: 00-0400-F1; Description of Proposed Action: The applicant proposes to modify an existing pier by constructing a boatlift. Type of Application: U.S.A.C.E. permit application #19428(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Wal-Mart Stores, Inc. Location: The project site is located on a 22-acre, undeveloped tract of land at the intersection of FM 518 and State Highway 146, south of Kemah in Galveston County. CCC Project No.: 00-0406-F1; Description of Proposed Action: The applicant proposes to place fill into 0.55 acres of wetlands for the purpose of constructing a retail development. Four isolated, herbaceous wetland areas were identified within the tract. To compensate for wetland impacts, the applicant proposes to participate in Armand Bayou's Type 1 "In Lieu Fee" program and fund 2 acres of wetland prairie enhancement. Type of Application: U.S.A.C.E. permit application #22181 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Dan A. Hughes; Location: The project site is located within State Tract 154, Aransas Bay. CCC Project No.: 00-0408-F1; Description of Proposed Action: The applicant proposes to drill Well Number 1 and has moved the proposed surface location approximately 800 feet to the south and approximately 500 feet to the east of the original proposed location. Type of Application: U.S.A.C.E. permit application #21832(01)/002 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200007971
Larry R. Soward
Chief Clerk
Coastal Coordination Council
Filed: November 15, 2000

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Comptroller of Public Accounts

Notice of Contract Award

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #116a) was published in the September 22, 2000, issue of the *Texas Register* at 25 Tex Reg 9711.

The consultant will advise Comptroller on statistical issues and appear as an expert witness in appeals of the Property Value Study and any subsequent litigation.

The contract was awarded to: Analytical Systems, Inc., P. O. Box 3041, Galveston, Texas 77552. The total amount of the contract is not to exceed \$25,000.00. The project will culminate in a report and various services provided thru August 31, 2001.

The term of the contract is November 10, 2000, thru August 31, 2001.
TRD-200007966
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 15, 2000

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Notice of Contract Award

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of professional services contract award.

The notice of request for proposals (RFP #112b) was published in the September 1, 2000, issue of the *Texas Register* at 25 Tex Reg 8780.

The contractor will provide professional appraisal services to the Comptroller in conducting a unit valuation appraisal of Southwestern Bell Telephone Company.

The contract was awarded to: Brent Eyre, ASA, 5198 S. Perseille Drive, Taylorsville, Utah 84118. The total amount of the contract is not to exceed \$25,000.00. The project will culminate in a report and various services provided by December 31, 2000.

The term of the contract is November 1, 2000, thru August 31, 2001.
TRD-200007967

Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 15, 2000

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

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

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/20/00 - 11/26/00 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 11/20/00 - 11/26/00 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200007926
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 14, 2000

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Credit Union Department

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from San Jacinto Area Credit Union, Pasadena, Texas to expand its field of membership. The proposal would permit employees of BHI Corporation, Houston, Texas to be eligible for membership in the credit union.

An application was received from Educational Employees Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit individuals who live or work in the counties of Hood, Johnson, or Palo Pinto; excluding persons eligible for primary membership in any other credit union with a full service office in the specified geographic area on October 24, 2000, and having a total membership of less than 20,000 members at the time membership is sought unless such credit union overlaps Educational Employees Credit Union's Select Employee Groups as a result of having sought a low-income or other community field of membership expansion to be eligible for membership in the credit union.

An application was received from Dallas Treasury Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit U.S. Government Employees who live or work in Dallas County or Tarrant County, Texas to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit employees of Damon Independent School District (DISD) to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The

proposal would permit employees of Angleton Independent School District (AISD) to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit employees of the city of Lake Jackson to be eligible for membership in the credit union.

An application was received from Allied Credit Union, Houston, Texas to expand its field of membership. The proposal would permit (1) any current or future affiliates or successors of Allied Mortgage Capital Corp.; (2) employees of ALLQUEST Mortgage, and any current or future affiliates or successors of said company, who work in or are paid from Houston, Texas; (3) employees of ALLQUEST Real Estate, and any current or future affiliates or successors of said company, who work in or are paid from Houston, Texas; and, (4) employees of Allied Mercantile Insurance Co., and any current or future affiliates or successors of said company, who work in or are paid from Houston, Texas to be eligible for membership in the credit union.

An application was received from Premier America Credit Union, Chatsworth, California to expand the field of membership of its out-of-state branch office located in Houston, Texas. The proposal would permit the employees, retirees, annuitants, and their family members, of Saint-Gobain Ceramics & Detectors, who work in or are paid from Houston, Texas to be eligible for membership in the credit union.

An application was received from Premier America Credit Union, Chatsworth, California to expand the field of membership of its out-of-state branch office located in Houston, Texas. The proposal would permit the employees, retirees, annuitants, and their family members, of VanBreemen Insurance Agency, Inc. dba Insurance Concepts, Nacogdoches, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200007988
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2000

◆ ◆ ◆
Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Dixie Bell Credit Union (Fort Worth) seeking approval to merge with Educational Employees Credit Union (Fort Worth) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider

in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200007989
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2000

◆ ◆ ◆
Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved
Centex Citizens Credit Union, Mexia, Texas - See *Texas Register* issue dated August 25, 2000

United Heritage Credit Union, Austin, Texas (2 Appls.) - See *Texas Register* issue dated August 25, 2000

Premier America Credit Union, Chatsworth, California (13 Appls.) - See *Texas Register* issue dated August 25, 2000

Application(s) to Amend Articles of Incorporation - Approved
Superior Cable Credit Union, Brownwood, Texas - See *Texas Register* issue dated October 27, 2000

Educational Employees Credit Union of Fort Worth, Fort Worth, Texas - See *Texas Register* issue dated October 27, 2000

Application(s) for a Merger or Consolidation - Approved
All Saints Credit Union and Bluebonnet Federal Credit Union - See *Texas Register* issue dated September 29, 2000

O.C.A.W. of Texas Credit Union and GTX Credit Union - See *Texas Register* issue dated November 3, 2000

TRD-200007991
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2000

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Deep East Texas Workforce Development Board, Inc.

Request for Proposal

The Deep East Texas Local Workforce Development Board, Inc. is seeking a qualified entity to provide Video Conferencing Equipment for 5 sites. Bidder shall be an experienced reseller offering project management, delivery of equipment, and successful implementation.

RFP release date: 8:00 a.m., Friday November 17, 2000.

Deadline for submission of proposal: 10:00 a.m. CST, Thursday, December 7, 2000

Requests for copies of the RFP can be made to:

Martha Ann Paine, Technology Manager
Deep East Texas Local Workforce Development Board, Inc.
1318 S. John Redditt Drive, Suite C

Lufkin, Texas 75904

(936)639-8898

(936)633-7332

Email: Martha.paine@twc.state.tx.us

TRD-200007984

Charlene Meadows

Interim Director

Deep East Texas Workforce Development Board, Inc.

Filed: November 15, 2000

◆ ◆ ◆
Texas Education Agency

Notice of Contract Award

Description. The Texas Education Agency (TEA) solicited a contractor(s) through Request for Proposals (RFP) #701-00-048 for identifying and managing the collection, analysis, and reporting of information to TEA for its monitoring of local educational agencies to determine overall program quality and effectiveness. The purpose of this RFP was to solicit and ultimately select proposal(s) with regard to the identification, employment, and logistical support of contracted individuals to be utilized during the 2000-2001 school year. The RFP notice appeared in the August 18, 2000, issue of the *Texas Register* (25 TexReg 8081). This notice was amended in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8792) in which the number of educational entities scheduled for on-site monitoring from was increased from 195 to 240; the starting date was changed from October 1, 2000, to November 1, 2000; and the amount available for the contract was increased from \$665,055 to \$765,055.

The amount of the contract is \$764,750.00. The contract period is from November 1, 2000, to June 15, 2001. The contract was awarded to Oak Hill Technology, Inc., 12505 A Trail Driver, Austin, Texas 78737.

For additional information, contact Esther L. McCord, Division of Accountability Evaluations, TEA, (512) 463- 9625.

TRD-200007822

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: November 8, 2000

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Request for Early Reading Diagnostic Instruments

Description. The Texas Education Agency (TEA) is notifying publishers that early reading diagnostic instruments for Kindergarten, Grade 1, and Grade 2 may be submitted for review. Texas Education Code (TEC), §28.006, authorizes the commissioner of education to develop recommendations for school districts for administering early reading instruments to diagnose student reading skill and comprehension development.

Under TEC, §28.006(b), the commissioner of education shall adopt a list of early reading instruments that school districts may use to diagnose reading skill and comprehension development. Additionally, the reading instruments used must evaluate individual student reading progress and be used to determine students at-risk for dyslexia or other reading difficulties. Any reading instrument used must be based on scientific research concerning both reading skills development and comprehension development. The list of reading instruments adopted under TEC, §28.006(b), must also provide for diagnosing the reading

skills development and comprehension of students participating in a bilingual program under TEC, Chapter 29, Subchapter B (relating to bilingual education and special language programs).

Program Requirements. School districts were required to administer early reading instruments beginning with the 1998-1999 school year. Results from the early reading instruments will be used to inform instruction and provide grade appropriate intervention activities to identified students as determined and established by the school district. Results from the early reading instruments will also be reported to the commissioner of education, the local school board of trustees and parents and/or guardians. The list of early reading instruments will be made available to local school districts and charter schools no later than May 1, 2001. The list of instruments adopted by the commissioner will remain in effect through the 2002-2003 school year. State funds will only pay for the cost of early reading instruments on the list adopted by the commissioner.

Selection Criteria. Proposed reading instruments (English or Spanish) must be designed to evaluate at least four main elements: (1) phonological awareness; (2) graphophonemic knowledge; (3) word reading; and (4) oral reading accuracy and comprehension of text, as appropriate for Kindergarten, Grade 1, and Grade 2. Proposed reading instruments will be evaluated for validity, reliability, and for use in determining students at-risk for dyslexia and other reading difficulties. Proposed reading instruments will also be evaluated for cost-effectiveness, as well as ease of administration and application by the classroom teacher. Additional information regarding the criteria used to select instruments is available through the Office of Statewide Initiatives. For additional information, contact the Office of Statewide Initiatives at (512) 463-9027.

Proposals must be submitted to the Office of Statewide Initiatives, Suite 4-104, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Tuesday, December 15, 2000, to be considered. If you would like your reading instrument returned after review, please indicate so on a cover letter submitted with the proposal.

TRD-200007968

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: November 15, 2000

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State Board for Educator Certification

Withdrawal of Request for Applications

The State Board for Educator Certification has withdrawn from consideration a Request for Applications, 705-01-004, Texas Educator Beginning Support System--Professional Development, which appeared in the November 10, 2000 issue of the *Texas Register* (25 TexReg 11314).

For more information please call (512) 469-3043

TRD-200007970

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Filed: November 15, 2000

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General Services Commission

Notice to Bidders - NTB 99-015S-303

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION &

SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 99-015S-303, Security System for John H. Reagan Building, 105 W. 15th Street, Austin, Texas, 78701, on Thursday, December 14, 2000, at 3:00PM. HUB Subcontracting Plans are due Friday, December 15, 2000, at 3:00PM. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 99-015S-303 - Security system equipment/installation is approximately \$415,000.

Bid & HUB Subcontracting Plan Receipt Location: General Services Commission/FCSM will receive bids at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701.

Contractor Qualifications: Contractors should submit information to Kroll Schiff & Associates on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5:00PM on Thursday, December 7, 2000, to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by Kroll Schiff & Associates of contractor qualification statements is required **prior to receiving bid documents**.

Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES, PARTICULARLY IN THE INSTALLATION OF EQUIPMENT. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE. Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1 percent of the total contract. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at www.gsc.state.tx.us and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available only for pre-approved prime contractors from the consultant, **Kroll Schiff & Associates, 1025 Main Street, Bastrop, Texas, 78602, Phone - 512-321-4421, Fax: 512-321-1746, upon delivery of a refundable deposit of \$50.00 per set.** Due to the nature of the system, plans will only be available through pre-approved prime contractors and the consultant.

Pre-Bid Conference: There will be MANDATORY Pre-Bid Conference on **Friday, December 1, 2000, at 10:00AM**, at Room 200B, General Services Commission, 1711 San Jacinto, Austin, Texas 78701.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES. TO BE RUN IN: AUSTIN AMERICAN-STATESMAN, SAN ANTONIO EXPRESS-NEWS 2 TIMES: Monday, November 13, 2000, and Wednesday, November 22, 2000

TRD-200007823

Cynthia Hill

Legal Counsel

General Services Commission

Filed: November 8, 2000

Texas Department of Health

Notice of Amendment to the License of Waste Control Specialists, LLC

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number 12 authorizes: (1) the modification of the facility by conversion of the east end of the stabilization building to function as a Permacon-like structure; (2) the addition of a loading bay attached to the Permacon portion of the stabilization building; (3) the addition of an "employees center" attached by a passage way to the Permacon portion of the stabilization building; (4) the use of a shredder for treatment of waste; and (5) the use of a Prentice Arm for mixing waste in the two pits in the floor of the Permacon portion of the stabilization building.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC) Chapter 289, and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.116 and as set out in 25 TAC §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), and the formal hearing procedures of the department (25 Texas Administrative Code §1.21. et seq.).

A copy of the license amendment and supporting materials are available for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungeate, Custodian of Records, Bureau of Radiation Control.

TRD-200007963

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 14, 2000



Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: James F. Bonner, D.D.S., San Antonio, R08640; Phelgar D. Mosely, D.D.S., Amarillo, R10112; Debra G. Stewart, D.D.S. and Donald R. Tamplen, D.D.S., Stafford, R10144; Alfred Marquez, Jr., D.D.S., El Paso, R21286; M. Jerome Holmes, D.D.S., Humble, R21971; Twin Oaks Dental, Houston, R24085; Southwestern General Hospital, El Paso, R00669; Medical Arts Clinic, Portland, R05700; Houston Metropolitan Medical Associates, Houston, R24145; Animal Center, Inc., Fairfield, R11365; Lakeside Pet Clinic, Inc., Onalaska, R17244; Scintag, Inc., Cupertino, California, R15201; Associated X-Ray Corporation, East Haven, Connecticut, R18956; Siecor Corporation, Keller, R22645; Orthopaedic Foot & Ankle Surgery Dallas, Dallas, Z00374; The Valentine Foundation, Incorporated, Houston, Z01320.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200007964
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 15, 2000



Notice of Intent to Revoke the Radioactive Material License of Southwestern General Hospital

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Southwestern General Hospital, El Paso, L02338.

The complaint alleges that the licensee has failed to pay required annual fees. The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and

order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200007965
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 15, 2000



Texas Health And Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-03, Amendment Number 568.

The amendment clarifies definitions of case management services for infants and toddlers with developmental delays and changes the reimbursement rate for each child receiving a case management contact during that month. The amendment is effective February 1, 2000.

If additional information is needed, please contact Glenn Hart, Early Childhood Intervention, at 512-424-6830.

TRD-200007980
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: November 15, 2000



Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-09, Amendment Number 574.

The amendment clarifies revises the language in the reimbursement methodology for case management services to reflect the transfer of rate setting responsibilities from the Texas Department of Mental Health and Mental Retardation to the Health and Human Services Commission. The amendment is effective October 1, 2000.

If additional information is needed, please contact Deborah Hankey, Texas Department of Mental Health and Mental Retardation, at 512-206-5743.

TRD-200007981

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: November 15, 2000



Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-10, Amendment Number 575.

The amendment revises the language in the reimbursement methodology for rehabilitative services to reflect the transfer of rate setting responsibilities from the Texas Department of Mental Health and Mental Retardation to the Health and Human Services Commission. The amendment is effective October 1, 2000.

If additional information is needed, please contact Deborah Hankey, Texas Department of Mental Health and Mental Retardation, at (512) 206-5743.

TRD-200007982
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: November 15, 2000



Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-14, Amendment Number 579.

The amendment clarifies that the Texas Health and Human Services Commission is the single state agency responsible for rate setting for nursing home services. The amendment also specifies that rates will be adjusted retroactively for facilities that fail to meet staffing/spending requirements. With the implementation of this amendment rates will be set for a period of two years instead of annually. The amendment is effective September 1, 2000.

If additional information is needed, please contact Pamela McDonald, Texas Department Human Services, at (512) 438-4086.

TRD-200007983
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: November 15, 2000



Texas Department of Housing and Community Affairs

Community Services Section Notice of Public Hearings

Community Services Block Grant and Community Food and Nutrition Program

The Community Services Block Grant Act (42 U.S.C. §9901 *et seq.*) and Texas Government Code, Sections 2306.092(11), 2105.053 and 2105.054, require public hearings on the intended use of federal block grant funds within Texas. The Texas Department of Housing and Community Affairs (TDHCA) will conduct seven public hearings

statewide to receive public input on proposed program administration and use of program funds to operate the Community Services Block Grant (CSBG) and Community Food and Nutrition Program (CFNP) programs in Federal fiscal year (FFY) 2002-2003, should these funds become available. The hearings will be held in conjunction with the State Low Income Housing Plan and Annual Report (Draft for Public Comment), and the Draft 2001 State of Texas Three Year Consolidated Plan that includes the Emergency Shelter Grants Program (ESGP) and other programs funded through the U.S. Department of Housing and Urban Development.

TDHCA representatives will be present at each scheduled hearing to explain the planning process and to receive written and/or oral testimony from interested citizens and groups. Several programs will be presented at each hearing, and this announcement specifies the scheduled time for the CSBG and CFNP presentations whenever possible. Interested parties may submit written testimony at any time; oral comment must be presented according to program. Public hearings will be held as follows:

Monday, November 27, 2000, at the Tyler Public Library, 201 South College Ave., Tyler, at 1:00 p.m. The CSBG and CFNP program presentation will begin at 5:30 p.m.

Tuesday, November 28, 2000, at Mercedes City Hall, 400 South Ohio St., Mercedes, at 1:00 p.m.

Wednesday, November 29, 2000, Unger Memorial Library, 825 Austin St., Plainview, at 1 p.m.

Saturday, December 2, 2000, at the G. W. Carver Branch Library, 3350 East Commerce St., San Antonio, at 9:00 a.m. The CSBG and CFNP program presentation is scheduled to begin at 2:00 p.m.

Monday, December 4, 2000, at the City Council Chambers, #2 Civic Center Plaza, El Paso, at 10:00 a.m. The CSBG and CFNP program presentation is scheduled for the afternoon session that begins at 2:30 p.m. and will follow presentations for the State Low Income Housing Plan and the Three Year Consolidated Plan.

Tuesday, December 5, 2000, at the City Hall Annex Chambers, Public Level, 900 Bagby, Houston, at 10:00 a.m. The presentation of CSBG and CFNP programs is scheduled to begin at 2:30 p.m. after the presentation for the State Low Income Housing Plan and Annual Report.

Wednesday, December 6, 2000, at the Oak Lawn Branch Library, 4100 Cedar Springs Rd., Dallas, at 10:00 a.m. The CSBG and CFNP program presentation is scheduled for the afternoon session that begins at 2:30 p.m. and will follow presentations for the State Low Income Housing Plan and the Three Year Consolidated Plan.

Items for comment at the public hearings include a proposed plan to ensure timely expenditure of annual CSBG grant allocations that may involve the Department's recapture of certain unexpended funds.

A copy of the Intended Use Report will be available through the Department's website: www.tdhca.state.tx.us, and copies of the report will be available at each public hearing. The report may also be requested by writing the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941.

Comments on the intended use of CSBG and CFNP funds may be in the form of oral or written testimony at the public hearings, written testimony submitted to the address provided above, or via e-mail, dlang@tdhca.state.tx.us. Questions regarding the report may be directed to Dyna C. Lang, 512-475-3905, or in writing using any of the methods of contact listed in this notice. Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves

at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled meeting.

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TRD-200007985

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 15, 2000



Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for incorporation to the State of Texas by COMMUNITY FIRST GROUP HOSPITAL SERVICE CORPORATION, a domestic chapter 20, Group Hospital Service Corporation. The home office is in San Antonio, Texas.

Application for admission to the State of Texas by AMCOMP PREFERRED INSURANCE COMPANY, a foreign fire and casualty company. The home office is in North Palm Beach, Florida.

Application for admission to the State of Texas by FIRST STANDARD SECURITY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Dover, Delaware.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200007977

Judy Woolley

Deputy Chief Clerk

Texas Department of Insurance

Filed: November 15, 2000



Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Scottsdale Indemnity Company proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all coverages and territories: -35% for all other classes and -50% for only classes 7908 and 7909 in Commercial Auto.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by December 4, 2000.

TRD-200007845
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 9, 2000



Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Trinity Universal Insurance Company of Kansas, Inc. proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classifications: +32% for only Dallas and Travis territories and +37% for all other various territories under liability (BL, PD, UIM, Med. Pay and PIP) coverages: and +44% for only Dallas and Travis territories and +50% for all other various territories under physical damage (Comprehensive and Collision) coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by December 1, 2000.

TRD-200007886
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 13, 2000



Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Maryland Casualty Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all classes and

territories: -78.7% for liability and -62.4% for physical damage for their Personal Auto Antique and Classic Automobile program

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by December 7, 2000.

TRD-200007887
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 13, 2000



Notice of Public Hearing

The Commissioner of Insurance or his designee at a public hearing under Docket No. 2475 scheduled for December 18, 2000 at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin Texas will consider amendments proposed by the staff of the Workers' Compensation Division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for workers' Compensation and Employers' Liability Insurance (Manual). The purpose of these amendments to the Manual is to establish a new classification for residential domestic workers whose workers' compensation premium is based on payroll, to amend Rule XV to include the new classification and to make editorial changes to Rule XV. This change is necessary in order to establish a separate classification for residential domestic workers whose workers' compensation premium is based on payroll. Currently, the Manual allows the premium for residential domestic workers to be calculated on either a per capita basis or a payroll basis. However, there is not a separate classification to use if the premium for residential domestic workers is calculated on a payroll basis rather than on a per capita basis. Adoption of this recommended change will provide a classification for residential domestic workers regardless of whether the premium is determined on a per capita basis or a payroll basis.

The proposed changes add Code 0923 Domestic Workers - Residences: Payroll Basis to both the Alphabetic and Numeric Classification Sections of the Manual. In addition there are proposed changes to Rule XV - Domestic Workers - Residences to add a reference to Code 0923, to clarify that both Codes 0913 and 0923 are "a" rated classifications, and to make editorial changes to the rule that are necessary to eliminate conflict or confusion.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.60 and 5.96.

A copy of the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the proposed amendments, please contact Ms. Sylvia Gutierrez (512) 463-6327, (refer to Ref. No. W-1100-30-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on December 18, 2000. The written comments should be directed to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104.

An additional copy of the comments should be sent to Nancy Moore, Deputy Commissioner, Workers' Compensation, Texas Department of Insurance, P. O. Box 141904, MC 105-2A, Austin, Texas 78714-9104. Public testimony at the hearing on December 18, 2000 is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government code, Chapter 200a (Administrative Procedure Act).

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

TRD-200007919
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 13, 2000



Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2476 on December 18, 2000, at 1:30 p.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of a revised table concerning the Expected Loss Rates and Discount Ratios (ELR and D-ratios) by classification used in experience rating, which is contained in the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual), and an amendment to the Texas Workers' Compensation Classification Relativities Table (Relativities Table) to add Code 0923 and to indicate that the code will be "a" rated.

In its petition, the staff proposes the consideration and adoption of a revised table concerning the ELRs and D-ratios used in experience rating and an amendment to the Relativities Table so that they will be consistent with amendments to the Manual proposed by the staff of TDI's Workers' Compensation division. The staff of TDI's Workers' Compensation division proposed to establish a new classification for residential domestic workers whose workers' compensation premium is based on payroll. This classification would be in addition to an existing classification for residential domestic workers whose workers' compensation premium is proposed to be determined solely on a per capita basis. If the proposal of the staff of TDI's Workers' Compensation division is adopted, it will be necessary to make the amendments proposed by this petition.

The staff requests that the proposed revised Table II of the Manual and the amendment to the Relativities Table be adopted and made effective for all workers' compensation policies with an effective date on or after January 1, 2001.

The Commissioner has jurisdiction of this matter pursuant to the Texas Insurance Code, Articles 5.60 and 5.96.

Copies of the full text of the staff petition and the proposed revised tables are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. W-1100-31-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Lynda Nesenholtz, the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the

comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

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

TRD-200007979
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 15, 2000



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 John Hewitt & Associates, Inc., a foreign third party administrator. The home office is Portland, Maine.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200007976
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 15, 2000



Legislative Budget Board

Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Legal References

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations. Section 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit

testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

- (1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;
- (2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and
- (3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: ...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, other labor income, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 1999. The largest component of Texas personal income is wage and salary disbursements, estimated at \$322.4 billion during calendar 1999. Salary and wage disbursements are added with other labor income -- primarily employer contributions to private pensions and welfare funds -- and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated \$429.4 billion in calendar year 1999.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions -- principally social security payroll taxes paid by employees and self-employed -- are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be \$547.9 billion for calendar year 1999.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present

these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past thirteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources: (1) McGraw-Hill/DRI, (2) WEFA Group, (3) Texas Comptroller of Public Accounts, (4) Perryman Group, and (5) Regional Financial Associates. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include more detailed discussion of the forecasting methods used. See the following issues of the *Texas Register*: 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, and 23 TexReg 11472.

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2002-03 biennium over the 2000-01 biennium. These forecasts range from 1.1285 or 12.85 percent to 1.1418 or 14.18 percent.

Table 4 outlines briefly the sources and dates for the Texas personal income growth rates presented in Table 3.

The personal income growth rates shown in Table 3 or any more recent forecasts will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one or any combination of the growth rates shown in adopting a Texas personal income growth rate for the 2002-03 biennium.

Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2000-01 Biennium

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2000-01 biennium--the base biennium--is the second item of information to be determined by the Legislative Budget Board. As of November 15, 2000 the staff estimates this amount to be \$44,795,017,340. This item multiplied by the estimated rate of growth of Texas personal income from the 2000-01 biennium to the 2002-03 biennium produces the limitation on appropriations for the 2002-03 biennium under Article VIII, Section 22, of the Texas Constitution.

Calculating the 2002-03 Limitation

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2002-03 biennium may be illustrated by selecting a growth rate and applying it to the 2000-01 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth

rate is adopted, current estimates suggest a limitation on 2002-03 biennial appropriations from non-dedicated state taxes ranging from \$50.6 billion to \$51.1 billion.

Method of Calculating the 2000-01 Appropriations from State Tax Revenue Not Dedicated by the Constitution

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2000-01 biennium--the base biennium--is the second item of information to be determined by the Legislative Budget Board. As of November 15, 2000, the staff estimates this item to be \$44,795,017,340. This section details the sources of information used in this calculation.

Total appropriations for the 2000-01 biennium include those in the General Appropriations Act, House Bill No. 1 (H.B. 1), Seventy-sixth Legislature, plus any additional appropriations made in legislation passed by the Seventy-sixth Legislature for the 2000-01 biennium. Any subsequent appropriations made by the Seventy-seventh Legislature for the 2000-01 biennium would also be included in total appropriations.

Section I of Table 6, shows for general revenue related funds the total amount of appropriations, the amount financed from constitutionally dedicated tax revenue, from non-tax revenue and the remainder--the amount financed from tax revenue not dedicated by the Constitution--which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund. The Game, Fish and Water Safety Account and Department of Insurance Operating Account also receive tax revenue not dedicated by the Constitution, which is also included in the calculation of the limitation.

I. General Revenue Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations and (2) all other line item appropriations.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated-to-be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2000 amounts are based on actual 2000 expenditures. Amounts for fiscal year 2001 are taken from H.B. 1, Seventy-sixth Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 7 are from the *Fiscal Size Up, 2000-01 Biennium*, which was published by the Legislative Budget Board after the Seventy-sixth Legislative Session to summarize information contained in the General Appropriations Act. Appropriation amounts in the *Fiscal Size Up* are amounts from H.B. 1, Seventy-sixth Legislature, adjusted to reflect the Governor's vetoes, plus additional appropriations made by the Seventy-sixth Legislature for the 2000-01 biennium.

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the \$55,506,137,785 of general revenue related fund appropriations, \$44,700,363,980 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution. By subtracting the appropriations financed from the known sources listed in items one through 12 from the total of \$55,506,137,785 it can be established that appropriations totaling \$48,657,234,371 remain to be financed. (See item 13 in Table 6, Part B.)

Dedicated state tax revenues deposited into general revenue related funds are estimated to total \$1,691,722,287 during the 2000-01 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at \$9,114,051,519 for the 2000-01 biennium. (See third column of Table 6, Part B.)

General revenue related fund appropriations to be financed from non-dedicated tax revenue are shown in column four of Table 6, Part B. This amount totals \$44,700,363,980 for the 2000-01 biennium.

II. Insurance Company Maintenance Taxes

There are a number of taxes paid by insurance companies, the rates of which are set by the Department of Insurance with the statutory intent of producing the revenue necessary to help pay the administrative costs of the Department. Over a period of years, the revenue from these taxes should match the portion of the Department's administrative costs that is subject to the limitation on the growth of appropriations. In specific years this match may be imperfect because of additions to or reductions in balances in the various funds controlled by the Department. The amount shown as an appropriation from non-dedicated state tax revenues is based on actual 2000 revenues and estimated 2001 maintenance tax collections.

III. Boat and Boat Motor Sales and Use Tax

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining 5 percent is deposited into the Game, Fish and Water Safety Account. The portion of this tax which is deposited into the Game, Fish and Water Safety Account is included as an appropriation from tax revenue not dedicated by the Constitution. This amount is based on actual 2000 revenues and estimated 2001 boat and boat motor sales and use tax collections.

Grand Total

A grand total of \$55,600,791,145 in 2000-01 biennial appropriations is included in this analysis. Of this amount, \$1,691,722,287 is financed out of taxes dedicated by the State Constitution. Another \$9,114,051,519 is financed out of non-tax revenue. The remaining \$44,795,017,340 is financed out of tax revenue not dedicated by the State Constitution. This amount serves as a base for calculating the limitation on 2002-03 biennial appropriations from non-dedicated state taxes, as required by Art. VIII, Section 22, of the Texas Constitution.

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TRD-200007969

John Keel
Director
Legislative Budget Board
Filed: November 15, 2000

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Texas State Library and Archives Commission

Nominations for Appointment to the Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, §441.163 for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted for 30 days from the date of the publication of this announcement to fill the ten positions on the committee: two of whom represent counties, one of whom must be a county clerk or a district clerk; two of whom represent municipalities; two of whom represent school districts; two of whom represent appraisal districts; and two of whom represent water districts. At least one committee member must be a records management officer who is not also an elected county officer. At least four members must represent either a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more.

A nomination for appointment may be made by an organization representing officers or employees of the type to be appointed that has as members at least 50 of those officers or employees. As specified by statute, a nomination made by such an organization shall include a nominee who represents a county with a population of 10,000 or more and a nominee who represents a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more. The director and librarian shall appoint a nominee or shall appoint an officer chosen by the director and librarian, if there are no nominees. The director and librarian shall appoint members to give representation to all geographical regions of the state.

All appointments to the committee will be for terms ending February 1, 2003. To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

Nominations should be sent to Peggy Rudd, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

TRD-200007841
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: November 9, 2000

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Texas Natural Resource Conservation Commission

Invitation to Comment on the Notice of Availability of the Draft October 2000 Update to the Water Quality Management Plan for the State of Texas

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the draft October 2000 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of the Federal Clean Water Act (CWA), §208. The draft October 2000 WQMP Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the TNRCC certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES)

permits, EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the TNRCC.

A copy of the draft October 2000 Update may be found on the TNRCC's web page, the web address is <http://www.tnrcc.state.tx.us/water/quality/wqmp>. A copy of the draft may also be viewed at the TNRCC Library located at the Texas Natural Resource Conservation Commission, Building A, 12100 Park 35 Circle, North Interstate 35, Austin, Texas.

Comments on the draft October 2000 Update to the Water Quality Management Plan shall be submitted to Ms. Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Comments must be submitted no later than 5:00 p.m. on December 24, 2000. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by e-mail at svargas@tnrcc.state.tx.us.

TRD-200007961
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: November 14, 2000

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC staff proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 27, 2000**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that a proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 27, 2000**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed

phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Adolpho Ramirez dba Ramirez Body Shop; DOCKET NUMBER: 1999-1474- AIR-E; TNRCC IDENTIFICATION NUMBER: HX-2283-P/001; LOCATION: 4217 Cochran Street, Houston, Harris County, Texas; TYPE OF FACILITY: auto paint and body shop; RULES VIOLATED: §116.110(a)(1) and Texas Health and Safety Code, (THSC), §382.085(b) and §382.0518(a), by operating a auto repair and refinishing shop without first obtaining a permit or satisfying the conditions of an exemption from permitting authorization; §115.421(a)(8)(B) and THSC, §382.085(b), by exceeding the volatile organic compound content emission limit; §115.422(A) - (C) and THSC, §382.085(b), by failing to install and operate a system which totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures, and failing to keep all wash and waste solvents and other cleaning materials in an enclosed reservoir; §15.426(a)(1)(A) and THSC, §382.085(b), by failing to maintain material safety data sheets on site; PENALTY: \$10,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200007927

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 27, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 25, 2000**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: American Freightways Corporation; DOCKET NUMBER: 2000-0471-MLM-E; IDENTIFIER: Edwards Aquifer

Protection Program Number 98101201; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: freight terminal; RULE VIOLATED: 30 TAC §213.4(a), by failing to submit an Edwards Aquifer Protection Plan for an underground storage tank (UST) prior to initiating construction; 30 TAC §334.7(a), by failing to register a UST system; and 30 TAC §213.4(g) and (k), by failing to submit proof that the water pollution abatement plan had been submitted and implement measures of an approved water pollution abatement plan; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Angus Water Supply Corporation; DOCKET NUMBER: 2000-0716-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1750010; LOCATION: Angus, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4), by failing to provide a maximum authorized daily purchase rate specified in the contract with the City of Corsicana plus an actual production capacity of a minimum 0.6 gallons per minute (gpm) per connection; PENALTY: \$500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Arch Chemicals, Inc.; DOCKET NUMBER: 2000-0321-AIR-E; IDENTIFIER: Air Account Number JE-0073-N; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: sulfuric acid manufacturing; RULE VIOLATED: 30 TAC §116.110(a), Air Permit Number 3149, and the Code, §382.085(b), by failing to amend Air Permit Number 3149; 30 TAC §115.212(a)(3)(A), Air Permit Number 3149, and the Code, §382.085(b), by failing to incorporate a process that does not require purging the residual contents of the transfer line; 30 TAC §115.216(a)(2)(C), Air Permit Number 3149, and the Code, §382.085(b), by failing to incorporate a carbon adsorption system; and 30 TAC §116.115(a), Air Permit Number 3149, and the Code, §382.085(b), by failing to comply with permit emission limits of 275.0 pounds per hour for monthly average sulfur dioxide, maintain sulfur dioxide emissions below 1,000 parts per million, conduct daily calibrations on sulfur dioxide continuous emission monitor, and record actual instrument readings of fugitive monitoring equipment; PENALTY: \$33,300; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: The City of Bells; DOCKET NUMBER: 2000-0626-PWS-E; IDENTIFIER: PWS Number 0910001; LOCATION: Bells, Grayson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead and provide an overflow cover on the 200,000 gallon elevated storage tank; 30 TAC §290.43(c)(4) and (e), by failing to install a water level indicator on the 35,000 gallon ground storage tank and install an intruder resistant fence; and 30 TAC §290.46(j)(3) and (p), by failing to complete the certifications for two customer service inspections and record and maintain the results of annual inspections for the ground and elevated storage tanks; PENALTY: \$2,375; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5) COMPANY: City of Brazoria; DOCKET NUMBER: 2000-0998-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10133-001; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number 10133-001 and the Code, §26.121, by failing to maintain compliance with the permitted effluent limits; and 30 TAC §305.125(1) and (5), and TPDES Permit Number 10133- 001, by failing to operate

and maintain the wastewater treatment facility and all its systems; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Brazoria Interests, Inc. dba K & S Jiffy Mart #1; DOCKET NUMBER: 2000-0477-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0071768; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(9) and the Code, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser; and 30 TAC §115.246(6) and the Code, §382.085(b), by failing to maintain a log of the Stage II daily inspections; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Continental Cabinets Manufacturing, Inc.; DOCKET NUMBER: 2000-0040-AIR-E; IDENTIFIER: Air Account Number DB-0621-J; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: cabinet manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and the Code, §382.085(b), by failing to maintain proper records; and 30 TAC §106.4(c) and the Code, §382.085(b), by failing to properly maintain its air pollution control devices; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8) COMPANY: Cypress Hill Municipal Utility District No. 1; DOCKET NUMBER: 2000-0681-MWD-E; IDENTIFIER: Water Quality Permit Number 12327-001 and TPDES Permit Number 12327-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5), Water Quality Permit Number 12327-001, TPDES Permit Number 12327-001, and the Code, §26.212, by failing to install the required audio and visual alarm, adequately manage the activated sludge, prevent the discharge of sewage sludge, and comply with the permitted limits for total suspended solids; and 30 TAC §319.11(c), §305.125(5), Water Quality Permit Number 12327-001, and TPDES Permit Number 12327-001, by failing to install a staff gauge to accurately check the flow rate; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Dal-Tile Corporation; DOCKET NUMBER: 2000-0572-AIR-E; IDENTIFIER: Air Account Number DB-0242-V; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: tile manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 8726, and the Code, §382.085(b), by exceeding its permitted pounds per hour emission rates for hydrogen fluoride, nitrogen oxides, sulfur dioxide, and total volatile organic (VOC) compounds; PENALTY: \$24,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(10) COMPANY: Mr. Robert Davis dba Davis Store; DOCKET NUMBER: 2000-0549-PST-E; IDENTIFIER: PST Facility Identification Number 45921; LOCATION: Cuero, DeWitt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and the Code, §26.3475, by failing to maintain all corrosion protection systems; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475, by failing to test a line leak detector; and 30 TAC §334.51(b)(2)(C) and the Code, §26.3475, by failing to provide proper overfill prevention equipment

for the UST systems; PENALTY: \$4,320; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Diamond-Koch; DOCKET NUMBER: 2000-0854-AIR-E; IDENTIFIER: Air Account Number CI-0025-R; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: underground liquid petroleum gas storage; RULE VIOLATED: 30 TAC §111.111(a)(4)(A) and the Code, §382.085(b), by allowing visible emissions; and 30 TAC §101.6 and the Code, §382.085(b), by failing to submit completed upset reports; PENALTY: \$11,200; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Driscoll; DOCKET NUMBER: 2000-0884-PWS-E; IDENTIFIER: PWS Number 1780012; LOCATION: Driscoll, Nueces County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e)(2) and the Code, §341.0315(c), by failing to conduct reduced monitoring tap sampling for lead and copper; PENALTY: \$313; ENFORCEMENT COORDINATOR: Cynthia Salas, (915) 834-4949; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Equilon Pipeline Company L.L.C.; DOCKET NUMBER: 2000-0412-AIR-E; IDENTIFIER: Air Account Number HG-0660-O; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: bulk gasoline terminal; RULE VIOLATED: 30 TAC §101.20(1), 40 Code of Federal Regulations (CFR) §60.113(a) and §60.115a(a), and the Code, §382.085(b), by failing to maintain records of petroleum liquid storage temperatures and vapor pressure readings; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Tel Crosston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Excel Corporation; DOCKET NUMBER: 2000-0505-IWD-E; IDENTIFIER: Water Quality Permit Number 01463-001; LOCATION: Plainview, Hale County, Texas; TYPE OF FACILITY: beef slaughter; RULE VIOLATED: 30 TAC §305.125(1) and (5), Water Quality Permit Number 01463-001, and the Code, §26.121, by failing to limit the daily average flow of wastewater through the wastewater treatment plant, limit the daily average application rate to 3,200 gallons per acre per day, limit the maximum amount of ammonia, provide adequate maintenance of the treatment and irrigation facilities, and apply soil amendments such as lime, gypsum, or calcium chloride to the land application site; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(15) COMPANY: Forcenergy, Inc.; DOCKET NUMBER: 2000-0902-AIR-E; IDENTIFIER: Air Account Number AD-0045-I; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(1) and (2), and the Act, §382.085(b), by failing to submit the 1999 and 2000 annual compliance certifications; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Carol McGrath, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Formosa Hydrocarbons Company, Inc.; DOCKET NUMBER: 2000-0816-AIR-E; IDENTIFIER: Air Account Number CB-0053-U; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: natural gas liquids processing plant; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by

failing to submit the 1998 and 1999 annual compliance certifications; PENALTY: \$4,400; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412- 5503, (361) 825-3100.

(17) COMPANY: City of Gilmer; DOCKET NUMBER: 2000-0427-MWD-E; IDENTIFIER: Water Quality Permit Number 10457-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0025569; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10457-001, NPDES Permit Number TX0025569, and the Code, §26.121, by failing to meet effluent limits for total zinc and copper, and properly monitor total copper effluent; PENALTY: \$0; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Benjamin Sanjuan dba Golden Carriage Mobile Home Park; DOCKET NUMBER: 2000-0414-PWS-E; IDENTIFIER: PWS Number 1010560; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) and (2), by failing to provide a sample siting plan for bacteriological samples and submit bacteriological samples; 30 TAC §290.46(e), (f)(2)(B), (m), (n), and (w), by failing to provide a certified waterworks operator, obtain a chlorine test kit using a diethyl-p-phenylenediamine method, properly maintain the water system, conduct the chlorine residual test, provide a map of the distribution system, and post a community water system sign; 30 TAC §290.42(e)(2), by failing to provide mechanical chlorination; 30 TAC §290.45(b), by failing to meet minimum water system requirements; 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to provide a sanitary control easement and install a flow meter on the well discharge line; and 30 TAC §290.51(a)(3), by failing to pay outstanding public health service fees; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Cathy Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Fred Bankhead dba Gold Nugget Motor Company; DOCKET NUMBER: 2000-0753-AIR-E; IDENTIFIER: Air Account Number PC-0272-R; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: used car sales; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by allegedly offering for sale a vehicle with missing or inoperable emission control devices; PENALTY: \$400; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(20) COMPANY: Green Ribbon Enterprises, Inc. dba Kwik Serve; DOCKET NUMBER: 1999- 0870-PST-E; IDENTIFIER: PST Facility Identification Number 0004696; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1) and (2)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month and monitor pressurized piping in a UST; 30 TAC §334.93(a) and (b), by failing to demonstrate the required financial responsibility; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: LBC Petrounited, Inc.; DOCKET NUMBER: 2000-0665-IHW-E; IDENTIFIER: Industrial Solid Waste Registration Number 30985; LOCATION: Seabrook, Harris County, Texas; TYPE OF FACILITY: bulk terminal; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §265.193(a), by failing

to provide adequate secondary containment for a less than 90 days hazardous waste storage tank; PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Cathy Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Mr. Minh Hung Lam dba Mathis Country Market and Innpac Associates, L.L.C.; DOCKET NUMBER: 2000-0651-PST-E; IDENTIFIER: PST Facility Identification Number 27427; LOCATION: Mathis, San Patricio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures; 30 TAC §334.49(a)(2) and the Code, §26.3475, by failing to maintain all corrosion protection systems; 30 TAC §334.50(b)(1)(A) and (2), and the Code, §26.3475, by failing to monitor USTs and monitor piping; and 30 TAC §334.93, by failing to demonstrate the required financial responsibility; PENALTY: \$6,800; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: City of Mount Calm; DOCKET NUMBER: 2000-0380-MWD-E; IDENTIFIER: TPDES and Water Quality Permit Number 11464-001; LOCATION: Mount Calm, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC § 305.125(1), TPDES and Water Quality Permit Number 11464-001, Agreed Order Number 1996-1757- MWD-E, and the Code, §26.121, by failing to comply with the five-day biochemical oxygen demand and total suspended solids daily average concentration and loading limits; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: O.C. Property Owners Association; DOCKET NUMBER: 2000-0476-PWS-E; IDENTIFIER: PWS Number 0100063 and Certificate of Convenience and Necessity Number 12271; LOCATION: Bandera, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e)(2), by failing to conduct reduced tap monitoring sampling; 30 TAC §290.103(2) and the Code, §341.031(a) and §341.0315(c), by failing to obtain approval prior to the distribution of drinking water that exceeds the primary maximum contaminant level (MCL) for fluoride; 30 TAC §290.113(a) and the Code, §341.031(a) and §341.0315(c), by failing to obtain approval prior to the distribution of drinking water that exceeds the secondary MCL for sulfate; 30 TAC §290.103(5), by failing to provide public notice of the fluoride MCL; and 30 TAC §291.76 and the Code, §5.235(n), by failing to pay regulatory assessment fees; PENALTY: \$1,813; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Mr. Kevin Ashlock dba Red River Sales; DOCKET NUMBER: 2000-0778- AIR-E; IDENTIFIER: Air Account Number FB-0075-F; LOCATION: Bonham, Fannin County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by allegedly offering for sale a 1981 Ford F-100 with missing or inoperable vehicle emission control devices; PENALTY: \$300; ENFORCEMENT COORDINATOR: Melinda Houlihan, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(26) COMPANY: Alan Ritchey, Incorporated; DOCKET NUMBER: 2000-0473-AIR-E; IDENTIFIER: Air Account Number CV-0020-J; LOCATION: Valley View, Cooke County, Texas; TYPE OF FACILITY: feed mill; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3564, Agreed Order Docket Number 95-0169-AIR-E, and the

Code, §382.085(b), by failing to water, oil, and/or pave and clean all in-plant roads to achieve maximum control of dust emissions, operate the baghouse system in the processing area, properly maintain records for annual throughputs, keep records of scheduled cleaning and maintenance of the abatement equipment, and keep a copy of its permit on site and readily available upon request; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(27) COMPANY: Thanh Van Nguyen dba St. Martin's Seafood; DOCKET NUMBER: 2000-0590-IWD-E; IDENTIFIER: NPDES Permit Number TX0113379; LOCATION: near Palacios, Calhoun County, Texas; TYPE OF FACILITY: shrimp farm; RULE VIOLATED: 30 TAC §305.125(1), (11)(A), and (17), Water Quality Permit Number 3819, NPDES Permit Number TX0113379, and the Code, §26.121, by failing to comply with their permit limits for daily maximum total suspended solids and daily maximum inorganic suspended solids and perform whole effluent toxicity testing; PENALTY: \$15,625; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: City of Tenaha; DOCKET NUMBER: 2000-0384-MWD-E; IDENTIFIER: TPDES Permit Number 0010818-001; LOCATION: Tenaha, Shelby County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), and (11)(A), and TPDES Permit Number 0010818-001, by failing to maintain a minimum concentration of four milligrams per liter dissolved oxygen, maintain the systems of wastewater treatment, mitigate high peak flows caused by inflow/infiltration, and maintain an accurately calibrated effluent flow meter; 30 TAC §305.126(a) and TPDES Permit Number 0010818-001, by failing to submit financial and engineering materials for expansion and/or upgrading of the wastewater treatment system after reaching 75% capacity; and 30 TAC §312.68 and TPDES Permit Number 0010818-001, by failing to submit the annual sludge disposal summary; PENALTY: \$0; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: TOSCO Corporation; DOCKET NUMBER: 2000-0838-AIR-E; IDENTIFIER: Air Account Numbers EE-1030-E, EE-1044-Q, and EE-1943-T; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and the Code, §382.085(b), by allowing the transfer of gasoline with a Reid Vapor Pressure greater than seven pounds per square inch at store number one, two and three; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(30) COMPANY: Varco Shaffer, Incorporated; DOCKET NUMBER: 2000-0563-AIR-E; IDENTIFIER: Air Account Number HG-0509-T; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oilfield equipment manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the Code, §382.054 and §382.085(b), by failing to submit an abbreviated initial federal operating permit application; 30 TAC 116.110(a) and the Code, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to construction of a coating facility; and 30 TAC §115.421(a)(9)(A)(iii) and the Code, §382.085(b), by failing to comply with VOC limit of 3.5 pounds per gallon for miscellaneous metal parts and products coating; PENALTY: \$16,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Mr. Darrell Johnson dba Weatherford Truck Sales; DOCKET NUMBER: 2000-0901-AIR-E; IDENTIFIER: Air Account Number PC-0285-I; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by offering for sale to the general public a vehicle with missing or inoperable vehicle control devices; PENALTY: \$900; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(32) COMPANY: West Jefferson County Municipal Water District; DOCKET NUMBER: 2000-0540-PWS-E; IDENTIFIER: PWS Number 1230021; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d), (m), and (t), by failing to properly complete monthly operations reports and complete supplementary operating reports, maintain and remove excessive vegetation from the fences, properly maintain the interior coatings of the clarifiers, remove excessive algal buildup in the clarifiers, properly maintain the interior coatings of filters, repair or replace the severely corrodes and damaged weirs, replace the missing strand of barbed wire on the fence, repair the excessively leaking raw water pump, properly level the collection launderers on the clarifier, and remove accumulated oil and other floating debris from the ground storage tank; 30 TAC §290.43(c)(2) and (4), by failing to provide the roof hatch openings with suitable gaskets and provide the new ground storage tank with a water level indicator; 30 TAC §290.42(e)(4)(D), by failing to provide chlorination scales for the chlorine facilities; 30 TAC §290.45(b)(2)(A), (B), and (C), by failing to meet the minimum water system capacity requirements for a raw water pump, treatment plant, and transfer pump capacity of 0.6 gpm per connection; 30 TAC §290.41(e)(2) and (3)(C), by failing to provide and maintain raw water intake restriction signs visible from all parts of the restricted area around the raw water intake and provide intruder resistant fencing; 30 TAC §290.42(d)(2)(A), (5), (6)(E)(i), (7)(A), (9)(A), (10)(C)(ii), (v), and (vii), (12), and (j), by failing to provide a vacuum breaker on the hose bib, provide the caustic feed facilities with calibration cylinders, provide the chemical bulk storage facilities with secondary containment, provide a means for sludge depth measurement for the clarifiers, provide a raw water meter, provide suitable flow limiting devices on the discharge piping on all filters, provide, maintain, repair, or replace loss of head gauges on each of the filters, provide the filter discharge piping with suitable taps, properly identify water treatment plant piping with color coding or the use of labels, and provide a complete plant operations manual; 30 TAC §§290.46(d), 290.104, and 290.121, by failing to utilize a commission approved test method for determining the free chlorine residual; 30 TAC §290.121(b) and (c), and 40 CFR §141.22(a) and §141.23(k)(l), by failing to utilize a commission approved test method for determining pH and accurately record the extent of primary calibrations of the bench top turbidity meter; and 30 TAC §290.119(l), by failing to perform calibration checks weekly and quarterly on the continuous turbidity meter; PENALTY: \$10,600; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: West Texas Utilities Company; DOCKET NUMBER: 2000-0855-AIR-E; IDENTIFIER: Air Account Number WI-0025-C; LOCATION: Vernon, Wilbarger County, Texas; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §101.20(1) and (3), §116.115(c), Air Permit Numbers 9015 and PSD-TX-325M2, the Code, §382.085(b), and 40 CFR §6042a(a)(2) and (g), by failing to reduce, by a minimum of 70% based on a 30-day rolling average, the potential combustion concentration of sulfur dioxide in the plant's exhaust gas stream; PENALTY:

\$600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(34) COMPANY: Williams Field Services Company; DOCKET NUMBER: 2000-0643-AIR-E; IDENTIFIER: Air Account Numbers RG-0034-D and BE-0028-D; LOCATION: Refugio, Refugio County, Texas; TYPE OF FACILITY: gas compression station; RULE VIOLATED: 30 TAC §122.146(2) and the Act, §382.085(b), by failing to submit the 1998 annual compliance certifications; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200007931

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 27, 2000**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 27, 2000**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Helen Ables; DOCKET NUMBER: 1998-0582-PST-E; TNRCC IDENTIFICATION NUMBERS: 40950 - 40955; LOCATION: 1300 New Dallas Highway (Hwy.), Waco, McLennan County (Co.), Texas, 4403 Corsicana Hwy., Bellmead, McLennan Co., Texas, Farm to Market Road 1242, Interstate Hwy. 35, Abbott, Hill Co., Texas, 1300 East Waco Drive, Waco, McLennan Co., Texas, and 1423 New Dallas Hwy., Waco, McLennan Co., Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: §334.21(a), by failing to pay the registration fees with 30 days of

assessment notification; §334.54(d)(1)(B), by failing to initiate procedures to permanently remove from service, bring back into service or upgrade UST systems that were last registered as temporarily out of service; and §334.22, by failing to pay the outstanding facility fees for the 16 USTs; PENALTY: \$15, 000; STAFF ATTORNEY: Rebecca Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710- 7826, (254) 751-0335.

TRD-200007928

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Notice of Water Quality Applications

The following notices were issued during the period of September 22, 2000 through October 12, 2000.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE**.

CITY OF ALBA has applied for a renewal of TNRCC Permit No. 10547-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located just west of Farm-to-Market Road 17, approximately one mile south of the City of Alba in Wood County, Texas.

CITY OF ANAHUAC & TRINITY BAY CONSERVATION DISTRICT has applied for a major amendment to TNRCC Permit No. 10396-001 to authorize a variance to the buffer zone requirements. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the west bank of Anahuac Ditch, approximately 2,200 feet southeast of the intersection of Farm- to-Market Road 563 and Poskey Road SE of the City of Anahuac in Chambers County, Texas.

ANGELINA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14201-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located 22,700 feet east and 10,450 feet north of the intersection of U.S. Highway 59 and Farm-to-Market Road 2021 in Angelina County, Texas.

AQUASOURCE DEVELOPMENT COMPANY a provider of water and wastewater service, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14194-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately two miles southwest of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 1093 in Fort Bend County, Texas.

CITY OF ARP has applied for a renewal of TNRCC Permit No. 10511-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 211,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of State Highway 135 and State Highway Spur 80 and approximately 1 mile northeast of the intersection of State Highway 135 and Farm-to-Market Road 345 in Smith County, Texas.

CITY OF BANDERA has applied for a renewal of TNRCC Permit No. 10121-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 277,000 gallons per day. The facility is located approximately 0.5 mile northeast of the intersection of State Highway 16 and Farm-to-Market Road 689 in the City of Bandera in Bandera County, Texas.

BEACON ESTATES WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit No. 12848-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 800 feet east of Farm-to-Market Road 359; approximately 3 miles north of the intersection of Farm-to-Market 359 and Farm-to-Market 1458 in Waller County, Texas.

CITY OF BIG SPRINGS has applied for a renewal of TNRCC Permit No. 10069-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,800,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,800,000 gallons per day. The facility is located on the north side of Eleventh Street, approximately 1,000 feet east of the intersection of Farm-to-Market Road 700 and Eleventh Street in Howard County, Texas.

CANEY CREEK MUNICIPAL UTILITY DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14177-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located 650 feet south of the intersection of Dolphin Way and Old Caney Drive in the Downey Caney Creek Club Subdivision in Matagorda County, Texas.

CITY OF CHILDRESS has applied for a renewal of Permit No. 10076-003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 232,000 gallons per day via surface irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located within the property boundaries of the Childress Municipal Airport, approximately 4 miles west of the intersection of U.S. Highways 287 and 83-62 in Childress County, Texas.

CITY OF CISCO has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit No. 10424-002 to authorize the discharge of treated water treatment filter backwash water from a daily average flow not to exceed 40,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 400 feet west of State Highway 6 and approximately 800 feet downstream of the Lake Cisco Dam, and approximately 3.5 miles north of the intersection of U.S. Highway 80 and State Highway 6 in Eastland County, Texas.

CITY OF COLEMAN has applied for a renewal of TNRCC Permit No. 10150-003, which authorizes the discharge of backwash filter effluent from a water treatment plant at a daily average flow not to exceed 50,000 gallons per day. The facility is located on North Mississippi Street in the City of Coleman in Coleman County, Texas.

CITY OF COLLEGE STATION, PUBLIC UTILITIES DEPARTMENT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10024-006, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,500,000 gallons per day. The current permit authorizes the land application of Class A sewage sludge and marketing and distribution of sewage sludge. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10024-006 will replace the existing NPDES Permit No. TX0047163 issued on July 19, 1996 and TNRCC Permit No. 10024-006. The facility is located adjacent to the west

side of Carters Creek, approximately 0.75 mile east of State Highway 6, and approximately 1,800 feet east and 4,000 feet north of the intersection of State Highway 6 East and Texas Avenue in Brazos County, Texas. The sludge treatment works are located on the same site as the wastewater treatment plant.

TOWN OF DARROUZETT has applied for a renewal of Permit No. 10446-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via surface irrigation of 36 acres of a Park and Golf Course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 1,000 feet south of Interstate Highway 15 and Farm-to-Market Road 2248, immediately east of the Town of Darrouzett in Lipscomb County, Texas.

CITY OF DIMMITT has applied for a renewal of Permit No. 10080-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day via surface irrigation of 477 acres of agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately one mile east of U.S. Highway 385 and 0.6 mile north of State Highway 86, northeast of the City of Dimmitt in Castro County, Texas.

FERNCO DEVELOPMENT, LTD., LENCO DEVELOPMENT, LTD., & NORCO DEVELOPMENT, LTD have applied for a major amendment to TNRCC Permit No. 11051-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 30,000 gallons per day to a daily average flow not to exceed 60,000 gallons per day and to authorize less stringent effluent limitations for ammonia-nitrogen. The facility is located approximately 500 feet east of Windfern Road on the south bank of Whiteoak Bayou and one mile northeast of U.S. Highway 290 and approximately 14 miles northeast of the City of Houston central business district in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 358 has applied for a renewal of TNRCC Permit No. 13296-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 780,000 gallons per day in the Interim phase and at an annual average flow not to exceed 1,000,000 gallons per day in the Final phase. The facility is located approximately 1,500 feet north of U.S. Highway 290 and 2,700 feet west of Mueschke Road. in Harris County, Texas.

CITY OF HIGGINS has applied for a renewal of TNRCC Permit No. 10572-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1.0 mile north and 0.5 mile west of the intersection of U.S. Highway 60 and State Highway 213 in the City of Higgins in Lipscomb County, Texas.

HUNTERWOOD PARTNERS, L.P has applied for a renewal of TNRCC Permit No. 11066-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located at 5830 South Lake Houston Parkway approximately 10.5 miles northeast of the Harris County Courthouse in downtown Houston and approximately 1.5 miles south/southeast of the intersection of Farm-to-Market Road 526 and U.S. Highway 90 in Harris County, Texas.

CITY OF JOHNSON CITY has applied for a renewal of TNRCC Permit No. 10198-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 303,000 gallons per day. The facility is located approximately 2,500 feet south-southwest of the U.S. Highway 281 crossing of the Pedernales River and 3,700

feet north of the intersection of Farm-to-Market Road 2766 and U.S. Highway 281 in Blanco County, Texas.

CITY OF LORAINNE has applied for a major amendment to TNRCC Permit No. 10430-001 to authorize a change in the disposal method to disposal by irrigation on 50 acres of land and an increase in the disposal of treated effluent to a volume not to exceed a daily average of 73,400 gallons per day. The facility and irrigation site are located northwest of the City of Loraine, approximately 1,500 feet west and 1,500 feet north of the intersection of Farm-to-Market Road 316 and Interstate Highway 20 in Mitchell County, Texas. The treated effluent is discharged in the interim phase to an unnamed tributary; thence to North Fork of Champion Creek; thence to Champion Creek Reservoir; thence to Champion Creek; thence to the Colorado River Below Lake J. B. Thomas in Segment No. 1412 of the Colorado River Basin. In the final phase, the treated effluent is disposed of via irrigation on 50 acres of the permittee's non public access land.

LYONDELL CHEMICAL WORLDWIDE, INC has applied for a renewal of TNRCC Permit No. 02756, which authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 001, 002, and 003. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0030228 issued on September 30, 1994 and TNRCC Permit No. 02756, issued on August 25, 1995. The applicant operates a plant manufacturing various synthetic organic chemicals. The plant site is located at 10801 Choate Road, northwest of the intersection of Bay Area Boulevard and Choate Road in the City of Pasadena, Harris County, Texas.

CITY OF MAGNOLIA has applied for a major amendment to TNRCC Permit No. 11871-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 650,000 gallons per day. The facility is located on the northeast corner of the intersection of Arnold Branch and Nichols Sawmill Road, approximately 1.5 miles south of the intersection of Farm-to-Market Road 1774 and Farm-to-Market Road 1488 in Montgomery County, Texas.

NORTHAMPTON MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to authorize the addition of Marketing and Distribution of Class A Sewage Sludge. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The draft permit authorizes Marketing and Distribution of Class A Sewage Sludge and land application of Class A Sewage Sludge for beneficial use on property owned and operated by the permittee. The plant site is located at 24235 Gosling Road, on the north bank of Willow Creek approximately 1,200 feet upstream of the Gosling Road crossing of Willow Creek in Harris County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a major amendment to TNRCC Permit No. 11894-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 270,000 gallons per day to a daily average flow not to exceed 450,000 gallons per day with an intermediate phase of 360,000 gallons per day. The facility is located approximately 3/4 mile east of Farm-to-Market Road 740 and 3/4 mile northwest of Farm-to-Market 549 in Rockwall County, Texas.

CITY OF POTTSBORO has applied for a renewal of TNRCC Permit No. 10591-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located on County Line Road at Little Mineral Creek, approximately 1.6 miles north of the intersection of Farm-to-Market Road 120 and Farm-to-Market Road 996 in Grayson County, Texas.

RIVER PLACE MUNICIPAL UTILITY DISTRICT has applied for a renewal of Permit No. 11514-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 207,000 gallons per day via irrigation of 92 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 4 miles northwest of the intersection of Farm-to-Market Road 2222 and State Highway - Loop 360, and 5/8 mile north of Lake Austin in Travis County, Texas.

RIVIERA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11515-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day via surface irrigation of 40 acres of agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located within the community of Riviera and immediately west of a county road at a point approximately 1,300 feet south of Farm-to-Market Road 771 and 2,600 feet northeast of U.S. Highway 77 on school district property in Kleberg County, Texas.

ROYAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 10873-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10873-001 will replace the existing NPDES Permit No. TX0032077 issued on May 11, 1990 and TNRCC Permit No. 10873-001. The facility is located on 2520 Durkin Road in the City of Brookshire in Waller County, Texas.

CITY OF RUNAWAY BAY has applied for a major amendment to TNRCC Permit No. 10862-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 2,000 feet north of U.S. Highway 380 and approximately 7,000 feet southwest of the point where U.S. Highway 380 crossed Lake Bridgeport in Wise County, Texas.

CITY OF SAN JUAN has applied for a major amendment to TNRCC Permit No. 11512-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 1,150,000 gallons per day to an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 1.9 miles south of U.S. Highway 83 Business Route at the south end of the San Antonio Road in the City of San Juan in Hidalgo County, Texas.

CITY OF SILSBEE has applied for a major amendment to TNRCC Permit No. 10282-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 1,600,000 gallons per day. The plant site is located approximately 400 feet east and 800 feet south of the intersection of U.S. Highway 96 and Third Street in the southern portion of the City of Silsbee in Hardin County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11627-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day via surface irrigation of a nonpublic access field. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located within the boundaries of Fairfield Lake State Park, approximately three miles east of Fairfield Lake State Recreation Area 2 which is approximately two miles northeast of the intersection of Farm-to-Market Road 2570 and Farm-to-Market Road 3285 in Freestone County, Texas.

U.S. DEPARTMENT OF THE INTERIOR has applied for a renewal of TNRCC Permit No. 12865-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. The facility is located approximately 3300 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas

UNITED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13832-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via subsurface drip irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located adjacent to the east side of Espejo-Molina Road, approximately 3.5 miles west of the intersection of U.S. Highway 83 and Espejo-Molina Road, approximately 9.5 miles southwest of the City of Laredo in Webb County, Texas.

UTILITIES INVESTMENT COMPANY, INC has applied for a renewal of TNRCC Permit No. 12863-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1,000 feet northeast of the intersection of Crosby-Lynchburg Road and Fig Orchard Road, and 3 1/4 miles south of the intersection of Farm-to-Market Roads 2100 and 1942 in Harris County, Texas.

TRD-200007960

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Notice of Water Rights Applications

LENMO, INC., applicant, 8501 North Monticello, Granbury, Texas 76049, seeks an amendment to a Certificate of Adjudication pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. Certificate No. 12-4072 authorizes the maintenance of an existing off-channel reservoir impounding one acre-foot of water and the diversion, with a time priority of December 31, 1956, of not to exceed 308 acre- feet of water per annum from three points on the Brazos River in Hood County downstream of Lake Granbury at a maximum rate of 4.44 cfs (2000 gpm) to irrigate 2746.14 acres of land in the W. J. Moore Survey, Abstract No. 344. Ownership of the land and the water right authorized in the certificate includes an undivided 13.9997% by James E. Anthony and Martha Jane Anthony; an undivided 3.4458% by Martha Jane Anthony; an undivided 66.1055% by Lenmo, Inc., and an undivided 16.4490% by Panoramic Corporation. The other three owners of the water right have consented to Lenmo, Inc. requesting an amendment to the certificate. The certificate, as amended, authorized a diversion point on the Brazos River (Lake Granbury) and two additional diversion points downstream of the Lake Granbury Dam, and authorized Lenmo, Inc. to use their undivided portion of the 308 acre-feet of water per annum (203.6 acre-feet of water) for irrigation of an additional 20.328 acres of land in Hood County and to divert and use not to exceed 172 acre-feet of water per annum from the new diversion points for irrigation of not to exceed 115 acres of the land authorized for irrigation by the certificate. The time priority for use of Lenmo, Inc.'s undivided portion of the 308 acre-feet of water per annum and a maximum diversion rate of 4.44 cfs of December 31, 1956 except that it is junior in time priority to the rights authorized by Certificate Nos. 12-4073 and 12-4074. The time priority for Lenmo's rights to divert and use the additional 172 acre-feet of water per annum and the additional diversion rate of

1.94 cfs of December 31, 1963, except that it is also junior to the aforementioned two certificates. Certificate of Adjudication No. 12-4125 authorizes Rex Hall and wife, Neva Hall, with a time priority of May 31, 1962, to maintain an existing dam and reservoir on the Clear Fork Brazos River and impound therein not to exceed 2 acre-feet of water and to divert and use not to exceed 117 acre-feet of water per annum from the reservoir at a maximum rate of 2 cfs (900 gpm) for irrigation of 50 acres of land out of a 100 acre tract located in the H. & T.B. RR Co. Survey 41, Abstract No. 52, Fisher County. Pursuant to an Option Agreement dated December 22, 1999, between Lenmo, Inc. and the Halls, Lenmo, Inc. plans to acquire the 117 acre-feet per annum of irrigation water rights authorized by Certificate No. 12-4125. The dam authorized under Certificate No. 12-4125 will be used solely for domestic and livestock purposes. Applicants seeks to sever the water rights they plan to acquire under Certificate No. 12-4125 from that certificate, combine them with Lenmo's undivided portion of the rights under Certificate No. 12-4072, as amended, and amend Certificate No. 12-4072, as amended and combined by changing the place of use of the 117 acre-feet of water to any 50 acres of land now authorized for irrigation by Lenmo's portion of the water rights, allowing diversion of all the water authorized by Certificate No. 12-4072, as amended and combined, at any of the three diversion points, and increasing the maximum diversion rate by 2.0 cfs (900 gpm).

This notice is being sent to the owners of water rights with diversion points on the Brazos River between the diversion point on the Clear Fork, Brazos River and the diversion points authorized by Certificate No. 12-4072, as amended. The Executive Director of the Texas Natural Resource Conservation Commission will be recommending that any amendment granted for this application include a condition that it shall be junior in time priority to the water rights with diversion points on the Brazos River between the diversion point on the Clear Fork Brazos River and Lenmo's most downstream diversion point.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 23, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by November 23, 2000. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by November 23, 2000. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Notice is given that the CITY OF DALLAS, 1500 Marilla, Room 4A North, Dallas, Texas, 75201, applicant, seeks to amend Certificate of Adjudication No. 08-2457, as amended, pursuant to §11.122 Texas Water Code, and Texas Natural Resource Conservation Commission

Rules 30 TAC §§ 295.1, et seq. Certificate of Adjudication No. 08-2457 was issued to the City of Dallas on July 22, 1983 and authorizes the city to maintain Record Crossing Dam and Reservoir on the Old Channel of the Elm Fork Trinity River; California Crossing, Carrollton and Frasier dams and reservoirs on the Elm Fork Trinity River, and Bachman Dam and Reservoir on Bachman Branch, all tributaries of the Trinity River, Trinity River Basin, Dallas County and to impound not to exceed a total of 4517 acre-feet of water. Applicant is further authorized, through 3 amendments to the certificate, to divert and use 18381.4 acre-feet or water per annum from Old Channel of the Elm Fork Trinity River for municipal purposes, 700 acre-feet of water per annum for recreation, 300 acre-feet of water per annum for irrigation, and 369 acre-feet per annum for irrigation contracts; 432 acre-feet per annum for storage in California Crossing Reservoir with no diversion and 1927.8 acre-feet of water per annum from Bachman Reservoir for municipal purposes. (Totaling 22,110.2 acre-feet.) Applicant seeks to amend Certificate of Adjudication No. 08-2457, as amended, to add a diversion upstream of Carrollton Lake on the Elm Fork Trinity River, tributary of the Trinity River. The requested diversion point will be 16 miles river miles upstream of the existing diversion point on Old Channel Elm Fork Trinity River where water is backed up by Frasier Dam. This will insure continuity of water supply to the City of Dallas when the Bachman water treatment plant is down for repairs. The new diversion point for Certificate of Adjudication 08-2457 will be identical to that for Certificates of Adjudication Nos. 08-2456 and 2458 and found at N 89°W , 3665 feet from the NW corner of the J.C. Bevers Original Survey No. 409-P, Abstract No. 166 also being Latitude 32.97°N, Longitude 96.94°W, Dallas County, Texas. The authorized diversion amount and rate will not be changed and no other changes to the certificate are requested. This notice is being sent to you as owner of one of 6 water right holders with a diversion point on the Trinity River between the existing diversion point and the requested additional diversion point. Any proposed amendment for "run of the river" water requested in the application at the additional diversion point by the Executive Director will include a condition that it be junior in priority to these 6 water rights on the river in the Trinity River Basin.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by December 4, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by December 4, 2000. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by December 4, 2000. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200007959

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Public Notice - Requests for Nominations

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for one individual to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (council) for the following position. The appointment will be made by the TNRCC Commissioners.

Available position. An official from a city or county solid waste agency.

The council was created by the 69th Legislature (1983). Members represent various interests; i.e., city and county solid waste agencies, a public solid waste district or authority, a commercial solid waste land-fill operator, planning regions, an environmentalist, city and county officials, a financial advisor, registered waste tire processor, a professional engineer, a solid waste professional, a composting/recycling manager, and general public representatives.

Upon request from the TNRCC Commissioners, the council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

A minimum of four council meetings are held each year. The meetings usually last one full day and are held in Austin, Texas. Members who live outside the Austin area are reimbursed travel expenses to attend the meetings.

To nominate an individual.

1. Ensure the individual is qualified for the position which he/she is being considered.
2. Submit a biographical summary which includes work experience.

Expectance from nominee. Submit a letter indicating his/her agreement to serve, if appointed.

Address. Mail all correspondence to the attention of Gary W. Trim, Program Administrator, Waste Permits Division, TNRCC, P.O. Box 13087, MC 126, Austin, Texas 78711-3087 or fax to (512) 239-2007.

Deadline. Written nominations and letters from nominees must be received by the TNRCC on or before **5:00 p.m. on January 2, 2001**.

Date of the appointment. The appointment will be considered at the TNRCC Commission Agenda meeting to be held on January 24, 2001.

For further information regarding the council please contact Gary Trim at (512) 239-6708, or by e-mail at gtrim@tnrcc.state.tx.us.

TRD-200007962

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 14, 2000



Public Notice - State Superfund Registry

The Texas Natural Resource Conservation Commission (TNRCC or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the *Texas Register* on January 16, 1987 (12 TexReg 205). Pursuant to the Act, §361.181, the commission must update the registry (state Superfund registry) annually to add new facilities in accordance with the Act, §361.184(a) and §361.188(a)(1) (see also 30 TAC §335.343) or to delete facilities in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

Pursuant to the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows:

- 1.) **Col-Tex Refinery**, both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.
- 2.) **Precision Machine and Supply**, 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
- 3.) **Sonics International, Inc.**, north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
- 4.) **Maintech International**, 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
- 5.) **Federated Metals**, 9200 Market Street, Houston, Harris County: Magnesium dross/sludge disposal, inactive landfill.
- 6.) **Gulf Metals**, on Telean Street, northeast of the intersection of Mykawa Road and Almeda-Genoa Road, Houston, Harris County: disposal of hazardous materials.
- 7.) **Texas American Oil**, approximately three miles north of Midlothian on Old State Highway 67, Ellis County: waste oil recycling.
- 8.) **Niagara Chemical**, west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.
- 9.) **International Creosoting**, 1110 Pine Street, Beaumont, Jefferson County: wood treatment.
- 10.) **McBay Oil & Gas**, approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
- 11.) **Solvent Recovery Services**, 5502 FM 521 approximately 0.2-mile south of its intersection with Highway 6, Arcola, Fort Bend County: paint solvent recycling.

12.) **Harris Sand Pits**, 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

13.) **JCS Company**, north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

14.) **Jerrell B. Thompson Battery**, north of Phalba on County Road 2410, approximately one-mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

15.) **Aztec Ceramics**, 4735 Emil Road, San Antonio, Bexar County: tile manufacturing.

16.) **Hayes-Sammons Warehouse**, Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

17.) **Jensen Drive Scrap**, 3603 Jensen Drive, Houston, Harris County: scrap salvage.

18.) **Baldwin Waste Oil Company**, on County Road 44 approximately 0.1-mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

19.) **Hall Street**, north of intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

20.) **Unnamed Plating**, 6816-6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

21.) **Tricon America, Inc.**, 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

Pursuant to the Act, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and which have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows:

- 1.) **Kingsland**, in the vicinity of the 2100 block of FM 1431 and in the vicinity of the 2400 block of FM 1431 in the community of Kingsland, Llano County: two groundwater plumes.
- 2.) **First Quality Cylinders**, 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.
- 3.) **J. C. Pennco Waste Oil Service**, 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycler.
- 4.) **Crim-Hammett**, 801 Highway 64, Henderson, Rusk County: open pit dumping, buried waste.
- 5.) **Phipps Plating**, 305 East Grayson Street, San Antonio, Bexar County: metal plating.
- 6.) **Pioneer Oil and Refining Company**, 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.
- 7.) **Force Road Oil and Vacuum Truck Company**, 1722 County Road 573 (Alloy Road), approximately 1300 feet east of the Brazoria - Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.
- 8.) **Higgins Wood Preserving**, inside the bordering streets of North Timberland Drive (U.S. 59) on the west, Warren Street on the east, and Paul Avenue on the north, Lufkin, Angelina County: wood treatment.
- 9.) **Marshall Wood Preserving**, 2700 West Houston Street, Marshall, Harrison County: wood treatment.
- 10.) **Thompson Hayward Chemical Company**, on the east side of U.S. 277, 0.5-mile south of Munday, Knox County: pesticide formulation.

- 11.) **Avinger Development Company (ADCO)**, on the south side of Texas 155, approximately 1/4-mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.
- 12.) **Old Lufkin Creosoting**, 1411 East Lufkin Avenue, Lufkin, Angelina County: wood treatment.
- 13.) **Materials Recovery Enterprises**, about 4 miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial solid waste disposal site.
- 14.) **Harvey Industries, Inc.**, southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television cabinets and circuit board manufacturing.
- 15.) **Hu-Mar Chemicals**, McGothlin Road between 4th and 12th Streets, Palacios, Matagorda County: pesticide and herbicide formulation.
- 16.) **American Zinc**, approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.
- 17.) **Toups**, on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105 in Sour Lake, Hardin County: wood treatment.
- 18.) **El Paso Plating Works**, 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.
- 19.) **Spector Salvage Yard**, Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
- 20.) **Permian Chemical Company**, 325 Pronto Avenue (formerly listed as 1901 Pronto Road), southeast of Odessa, Ector County: chemical manufacturer.
- 21.) **Tucker Oil Refinery/Clinton Manges Oil & Refining Company**, east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.
- 22.) **Sampson Horrice**, 2000 and 2006 Plainfield Drive (formerly listed as 8460 Sparrow Street and 1 Sparrow Street), Dallas, Dallas County: inactive gravel pit landfill that illegally accepted hazardous and solid waste.
- 23.) **Barlow's Wills Point Plating**, south side of U.S. 80, approximately 3.4 miles east of its intersection with Texas 64, in Wills Point, Van Zandt County: inactive electroplating.
- 24.) **McNabb Flying Service**, located 1.5 miles northwest of Alvin, approximately 1-mile east of State Highway 6, at the intersection of Brazoria County Roads 146 and 539, Brazoria County: aerial pesticide applicator.
- 25.) **Stoller Chemical Company, Inc.**, 5200 North Columbia Street, east of the intersection of Hwy. 87 and Business 87, north of Plainview, Hale County: warehouse containing vats and leftover fertilizer products and an abandoned cattle trailer containing leaking drums of hazardous waste.

Since the last publication on May 26, 2000, the TNRCC has determined that four facilities, Stoller Chemical Company, Crim-Hammett, Force Road Oil and Vacuum Truck Company, and Tucker Oil Refinery/Clinton Manges Oil & Refining Company, may pose an imminent and substantial endangerment to public health and safety or the environment and pursuant to the Act, §361.184(a), have been added to the list of sites proposed to the state Superfund registry. Two sites, Aztec Ceramics and Tricon America have been determined to pose an imminent and substantial endangerment to public health and safety or the environment and pursuant to the Act, §361.188 are hereby listed on the state Superfund registry. Also, two sites, Butler Ranch and Poly-Cycle Industries have been deleted from the registry since the last publication.

To date, 20 sites: Aztec Mercury, Brazoria County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Double R Plating Company, Cass County; Hagerson Road Drum, Fort Bend County; Hart Creosoting, Jasper County; Hi-Yield, Hunt County; Houston Lead, Harris County; Houston Scrap, Harris County; LaPata Oil Company, Harris County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Waste Oil Tank Services, Harris County and Wortham Lead Salvage, Henderson County have been deleted from the state registry pursuant to the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344).

The public records for each of the sites are available for inspection and copying during regular TNRCC business hours at the TNRCC Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1-800-633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Building D and Building E. Copying of file information is subject to payment of a fee.

TRD-200007932
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: November 14, 2000

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North Texas Workforce Development Board

Workforce Investment Act (WIA) Providers of Training Services

The North Texas Workforce Development Board is procuring quotations to design and maintain a web page. If you are interested in bidding, please contact the person listed below with your pertinent business information.

Nita Keck, Administrative Technician, North Texas WDB, 1101 Eleventh Street, P.O. Box 4671, Wichita Falls, Texas 76308, Phone: (940) 767-1432, Fax: (940) 322-2683, e-mail: nita.keck@twc.state.tx.us

TRD-200007821
Mona Williams-Statser
Executive Director
North Texas Workforce Development Board
Filed: November 8, 2000

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Texas State Board of Podiatric Medical Examiners

Notice of Public Hearing

The Texas State Board of Podiatric Medical Examiners will be holding a public hearing at 10:00 a.m. on December 5, 2000, at 333 Guadalupe, Suite 100, Austin, Texas 78701 on the proposed rule change regarding §375.1, Definitions. The board is reinterpreting the definition of the foot. The proposed rule was published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9350).

The public is invited to attend to make public comment. Any written comments should be sent to Hemant Makan, Investigator III, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin,

Texas 78711-2216. All written comments must be received in this office no later than 5:00 p.m. on December 27, 2000.

This notification is made pursuant to the Texas Government Code, §2001.029, which allows for public comment.

TRD-200007954

Janie Alonzo

Staff Services Officer I

Texas State Board of Podiatric Medical Examiners

Filed: November 14, 2000

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 8, 2000, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TXU Energy Services Company for Retail Electric Provider (REP) certification, Docket Number 23248 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than December 1, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007866

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: November 10, 2000

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

On November 7, 2000, Intermedia Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60082. Applicant intends to reflect a merger with WorldCom, Inc.

The Application: Application of Intermedia Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23240.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than November 29, 2000. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23240.

TRD-200007819

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: November 8, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 7, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Global Metro Networks Texas, LLC for a Service Provider Certificate of Operating Authority, Docket Number 23242 before the Public Utility Commission of Texas.

Applicant intends to provide Optical Services, T1-Private Line, long distance, and business DS-1 and DS-3 services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007820

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: November 8, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 8, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Aerie Network Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23249 before the Public Utility Commission of Texas.

Applicant intends to provide fiber optic transmission capacity, and non-switched private line service.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007867

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 8, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Pacific Centrex Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23250 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, switched access service, PBX Trunking, exchange access services and optional features, and carrier access services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007868
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 9, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of NTWS Digital Broadband, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23255 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Dallas and Wichita Falls Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007908
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 10, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of WaKul, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23261 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007909
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 10, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of DV2, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23262 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007910

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 6, 2000, to amend a certificated service area boundary in Cameron County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend Certificated Service Area Boundaries Within Cameron County. Docket Number 23238.

The Application: The Public Utilities Board of the City of Brownsville, Texas (BPUB) filed an application to amend a certificated service area boundary in Cameron County. This service area exception is requested to allow BPUB to provide electric service to the Mano en Mano Phase II Subdivision, currently in development by Mission Investment Corporation. The land is unimproved at this time and no electric service is being provided. The area is presently singly certificated to Central Power and Light Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200007920
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Change in Public Hearing Date for Price to Beat Rulemaking

At the October 19, 2000 Open Meeting the Public Utility Commission of Texas (commission) approved publication of proposed Substantive Rule §25.41, Price to Beat. The proposed rule was published in the November 10, 2000 *Texas Register* at 25 TexReg 11213. Project Number 21409, *Rulemaking Regarding Price to Beat*, was assigned to this proceeding. In the preamble to the published rule, a public hearing was noticed for January 10, 2001.

The public hearing on this rulemaking will now be heard on Thursday, January 11, 2001 at 9:00 a.m. in the Commissioners' Hearing Room, in conjunction with the open meeting scheduled for that same date.

Questions concerning this notice should be referred to Tom Hunter, Legal Division, at (512) 936-7280 or Roni Dempsey, Rules Coordinator, at (512) 936-7308. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200007904

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Informational Filing by Reliant Energy, Inc. Regarding Wholesale Landfill Gas Project

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on November 3, 2000, informational notice of modification of the waiver granted by the commission to Reliant Energy for development of two landfill gas projects in Reliant Energy HL&P's service territory.

Docket Title and Number: Informational Notice of Reliant Energy, Inc. Regarding Wholesale Landfill Gas Project Located in Baytown, Texas. Docket Number 23229.

The Application: On November 3, 2000, Reliant Energy (Reliant) filed a letter of notification informing the commission that in lieu of developing three of the smaller two megawatt sites that were a part of the Reliant Energy Wholesale Landfill Gas Project, Reliant Wholesale is developing approximately eight-ten megawatts of landfill gas generation in Baytown, Texas located within Reliant Energy HL&P's service territory. Reliant states that although the Baytown site is in Reliant Energy HL&P's service territory, it is being constructed on a turnkey basis and will not be operational until after 2002, when retail competition is expected to commence and Reliant Wholesale will no longer be affiliated with Reliant Energy HL&P. On June 7, 2000, the commission granted Reliant an exception to proceed with the development of the Atascocita site in Humble consisting of approximately 16 megawatts, and the Blue Bonnet site in Houston which is two megawatts, located within Reliant Energy HL&P's service territory. As a result, Reliant asserts that another good cause exception to monitor these minor modifications to the original project should not be necessary.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23229.

TRD-200007924
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on October 3, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Edmonson Exchange for Expanded Local Calling Service, Project Number 23099.

The petitioners in the Edmonson exchange request ELCS to the exchanges of Hale Center, Kress, Lubbock, Olton, and Tulia.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin,

Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007906
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on October 5, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Schulenburg Exchange for Expanded Local Calling Service, Project Number 23118.

The petitioners in the Schulenburg exchange request ELCS to the exchanges of Brenham, Columbus, Hallettsville, and LaGrange.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than November 29, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200007907
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Notice of Petition for Rulemaking Regarding Complaints Related to the Implementation of House Bill 1777

The Public Utility Commission of Texas (commission) received a petition for rulemaking and draft rule from the Texas Coalition of Cities for Utility Issues (TCCFUI). The petition was filed on November 8, 2000 under Project Number 22909, *Discussion and Possible Rulemaking relating to Outstanding House Bill 1777 Implementation Issues*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

TCCFUI requests the commission initiate a rulemaking whereby cities in the exercise of their jurisdiction over public rights-of-way may file requests for investigation and/or complaints with the commission and for the commission to exercise authority to prevent, deter, and/or sanction unsafe or anti-competitive practices by certificated telecommunications providers (CTPs). TCCFUI states that for Local Government Code, Chapter 283 to work, standardized procedures are needed to facilitate the flow of information about CTP misconduct from cities and other governmental entities to the commission, particularly when commission intervention and certificate reconsideration is needed. TCCFUI asserts that the requested rules would enable the commission to carry out the change in Local Government Code §283.001 to encourage competition among local exchange telephone service providers and

ensure that providers do not obtain a competitive advantage or disadvantage in their ability to use public rights-of-way within a municipality.

Comments on the petition and draft rule may be filed not later than 3:00 p.m. on Friday, December 15, 2000. Copies of the petition and draft rule amendment may be obtained from the commission's Central Records, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 22909.

TRD-200007929
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2000



Public Notice of Amendment to Interconnection Agreement

On November 7, 2000, Southwestern Bell Telephone Company and Waller Creek Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23243. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23243. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 6, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23243.

TRD-200007869
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Public Notice of Amendment to Interconnection Agreement

On November 9, 2000, IVIT Communications Group, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23258. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23258. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 11, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule

§22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23258.

TRD-200007913
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Public Notice of Amendment to Interconnection Agreement

On November 9, 2000, Teligent Services, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23259. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23259. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 11, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings

concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23259.

TRD-200007914
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Public Notice of Amendment to Interconnection Agreement

On November 10, 2000, Southwestern Bell Telephone Company and Ft. Bend Long Distance doing business as Ft. Bend Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23264. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23264. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23264.

TRD-200007955
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2000



Public Notice of Amendment to Interconnection Agreement

On November 10, 2000, Southwestern Bell Telephone Company and Texas UM, Inc. (Urban Media), collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23265. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23265. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23265.

TRD-200007956
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2000



Public Notice of Amendment to Interconnection Agreement

On November 10, 2000, Southwestern Bell Telephone Company and Nextlink Texas, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23266. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23266. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23266.

TRD-200007957
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2000



Public Notice of Interconnection Agreement

On November 8, 2000, K2C Telcom and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23251. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23251. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 6, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23251.

TRD-200007870
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Public Notice of Interconnection Agreement

On November 8, 2000, Cbeyond Communications of Texas, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23252. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23252. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 6, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23252.

TRD-200007871
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Public Notice of Interconnection Agreement

On November 8, 2000, ETEX Telecom and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23253. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23253. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 6, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23253.

TRD-200007872
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2000



Public Notice of Interconnection Agreements

On November 9, 2000, Annox, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23257. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23257. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 11, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23257.

TRD-200007912
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Public Notice of Interconnection Agreements

On November 9, 2000, U.S. West Interprise America, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23263. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23263. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 11, 2000, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23263.

TRD-200007915
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Public Notice of Workshop on Amendments to Procedural Rule Subchapters P, Q and R

The Public Utility Commission of Texas (commission) will hold a workshop regarding possible amendments to the Procedural Rules, Subchapter P, Dispute Resolution; Subchapter Q, Post- Interconnection Agreement Dispute Resolution; and Subchapter R, Approval of Amendments to Existing Interconnection Agreements and Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i) on Thursday, December 7, 2000, from 9:00 a.m. to 1:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 22678, *Rulemaking to Amend PUC Procedural Rules, Subchapters P, Q and R* has been established for this proceeding.

Prior to the workshop, on November 30, 2000, the commission shall make available in Central Records under Project Number 22678 and on the commission's website at <http://www.puc.state.tx.us/rules/rule-make/index.cfm> a draft of the proposed amendments under consideration. Workshop participants should bring a copy of this draft to the workshop for discussions.

Questions concerning the workshop or this notice should be referred to Diane Parker at (512) 936- 7204 or Roni Dempsey at (512) 936-7308. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200007905
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2000



Southwest Texas State University

Consultant Contract

Southwest Texas State University is seeking a consultant to conduct market research regarding consumer interest in exhibits being designed

for the Texas Rivers Center, an educational and interpretive center focusing on the importance of and conservation of freshwater aquifers, springs, and rivers. SWT, in partnership with the Texas Parks and Wildlife Department, has developed a conceptual design of the interpretive center and the type of exhibits it will include. SWT is interested in compiling consumer information to be used in the development of these exhibits. Of particular interest is the expectation of teachers regarding use of the Center by school groups. A more detailed request for proposals is available upon request. Contact Dr. Michael L. Abbott, Special Assistant to the President, Southwest Texas State University, 601 University Drive, San Marcos, TX 78666, 512-245-2676.

TRD-200007990
William A. Nance
Vice President for Finance and Support Services
Southwest Texas State University
Filed: November 15, 2000



Veterans Land Board

Notice of Contract Award

In the July 7, 2000, edition of the *Texas Register* (25 TexReg 6618) the Texas Veterans Land Board (VLB) published a Request for Proposals seeking proposals from entities desiring to participate in the management and operation of Texas State Veterans Homes in selected sites in four different cities - Temple, Floresville, Bonham and Big Spring. The homes are long-term care facilities for Texas veterans needing skilled nursing care. A management agreement for the new William R. Courtney Texas State Veterans Home in Temple, Texas has been awarded to Weston Inn VA, LLC. A previous award for the Frank M. Tejada Texas State Veterans Home located in Floresville, Texas was published in the November 3, 2000, edition of the *Texas Register* (25 TexReg 11183). The VLB will publish in the *Texas Register* announcements of contract awards for the two remaining homes as they occur.

TRD-200007884
Larry R. Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: November 13, 2000



Texas Workforce Commission

Amendment to Request for Qualifications Asbestos Abatement and Repairs

The Texas Workforce Commission (the Agency) makes the following amendments to the Request for Quotations (RFQ) for the selection of a professional architectural/engineering (A/E) firm to remove asbestos-containing building materials and replacement with new materials in certain state buildings, which appeared in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10243).

The second paragraph is deleted and replaced with the following paragraph. The contract will require the A/E firm to develop the scope of the project, prepare construction drawings, specifications, bid documents, assist the Agency with hiring a contractor to remove the asbestos-containing materials and assist the Agency with hiring a contractor to build-back or reinsulate the areas where asbestos-containing materials are removed. The contract will also require the A/E firm to perform project management, coordinate the work, be responsible for compliance with applicable regulations, perform budgeting/payment activities and the oversight of all records, reports and permits.

The last sentence in the next to the last paragraph is deleted. The deleted sentence is "The RFQ response should contain a cost estimate for services to be performed per each building."

The last paragraph is deleted and replaced with the following paragraph. To be considered, your response must be received at Texas Workforce Commission, Attn. George Hicks, 101 E. 15th Street, Room 226T, Austin, Texas 78778-0001, on or before 5:00 p.m. on November 28, 2000. Any questions concerning this Amendment may be directed to George Hicks at 512-463-7486.

TRD-200007917
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: November 13, 2000

◆ ◆ ◆
Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission (TWCC) published proposed amendments to §143.3 and §143.4 in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10877). The notice contains errors as published.

On page 10878, right column, the second paragraph reads as:

"The amendments are proposed under the Texas Labor Code §§2.061, 410.004, 410.202, and 410.204."

This paragraph **should read as:**

"The amendments are proposed under the Texas Labor Code §§402.061, 410.004, 410.202, and 410.204."

TRD-200008012
◆ ◆ ◆

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

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Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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