

**Department of State Health Services  
Agenda Item for State Health Services Council  
October 5, 2006**

**Agenda Item Title:** Repeal 25 TAC §339.1 - §339.6 Concerning the Veterans Agent Orange Assistance Program  
**Agenda Number:** 3c

**Recommended Council Action:**

For Discussion Only  
 For Discussion and Action by the Council

**Background:** House Bill 2129, 67th Legislature, Regular Session, 1981, created the Texas Veterans Agent Orange Assistance Program. It was amended by Senate Bill 370, 68th Legislature, Regular Session, 1983. This legislation is codified as Health and Safety Code Chapter 83. The purpose of the program was to assist Texas veterans of the Vietnam conflict who may have been exposed to Agent Orange, an herbicide used as a defoliant in Vietnam from 1965-1971 by U.S. military forces, and suspected of creating long-term health problems to those exposed. Legacy agency, Texas Department of Health, Bureau of Epidemiology, administered the Agent Orange program and investigated the cause and effect relationships between the exposure of Vietnam veterans to herbicides, chemical defoliants, or other causative agents and the emergence of health problems.

The repeal of the rules is based on Health and Safety Code 83.010, Termination of Program and Duties. The Texas Legislature did not continue funding for the Agent Orange program; therefore, the program was phased out as of August 31, 1985. The original legislation provided that programs required by Health and Safety Code, Chapter 83 could be discontinued if “an agency of the federal government is performing the referral and screening functions required” under this law. The Veteran’s Administration has long provided these services, so this program is no longer required by law.

**Summary:**

The repeal of §339.1 - §339.6 is necessary because the Veteran’s Administration now administers the program.

**Summary of Stakeholder Input to Date (including advisory committees):**

Stakeholder input will be obtained by posting in the *Texas Register*.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rules contained in the agenda item # 3c.

<p><b>Agenda Item Approved by:</b> _____ Debra Stabeno, Assistant Commissioner, Prevention and Preparedness</p> <p><b>Presented by:</b> John F. Villanacci, Ph.D., NREMT-I <b>Title:</b> Manager <b>Program/Division:</b> Environmental and Injury Epidemiology and Toxicology Branch</p> <p><b>Contact Name/Phone:</b> Evelyn Shewmaker <b>Extension:</b> 6116</p>	<p><b>Date Submitted</b> 8/18/2006</p>
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Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 339. Toxicology  
Subchapter A. Veterans Agent Orange Assistance Program  
Repeal §339.1 - §339.6

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §339.1 - §339.6 concerning the Veterans Agent Orange Assistance Program.

BACKGROUND AND PURPOSE

House Bill 2129, 67th Legislature, Regular Session, 1981, created the Texas Veterans Agent Orange Assistance Program. It was amended by Senate Bill 370, 68th Legislature, Regular Session, 1983. This legislation is codified as Health and Safety Code Chapter 83. The purpose of the program was to assist Texas veterans of the Vietnam conflict who may have been exposed to Agent Orange, an herbicide used as a defoliant in Vietnam from 1965-1971 by U.S. military forces, and suspected of creating long-term health problems to those exposed. Legacy agency, Texas Department of Health, Bureau of Epidemiology, administered the Agent Orange program and investigated the cause and effect relationships between the exposure of Vietnam veterans to herbicides, chemical defoliants, or other causative agents and the emergence of health problems.

The repeal of the rules is based on Health and Safety Code 83.010, Termination of Program and Duties. The Texas Legislature did not continue funding for the Agent Orange program; therefore, the program was phased out as of August 31, 1985. The original legislation provided that programs required by Health and Safety Code, Chapter 83 could be discontinued if “an agency of the federal government is performing the referral and screening functions required” under this law. The Veteran’s Administration has long provided these services, so this program is no longer required by law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 339.1 - 339.6 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION-BY-SECTION SUMMARY

The repeal of §339.1 - §339.6 is necessary because the Veteran’s Administration now administers the program.

FISCAL NOTE

Casey S. Blass, Director, Disease Prevention and Intervention Section has determined that for each year of the first five-year period that the sections are no longer in effect, there will be no fiscal implications to state or local governments as a result of the repeal of these sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is to reflect that the Veteran’s Administration is responsible for the administration of the program.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be directed to John F. Villanacci, Ph.D., NREMT-I, Manager, Environmental and Injury Epidemiology and Toxicology Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or by email to [john.villanacci@dshs.state.tx.us](mailto:john.villanacci@dshs.state.tx.us) (please include the words “Agent Orange” in the subject line). Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The proposed repeal is authorized under Health and Safety Code, §83.010, Termination of Program and Duties; and Government Code §531.0055 and Health and Safety Code §1001.075 which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeal affects the Health and Safety Code, Chapters 83 and 1001; and Government Code, Chapter 531.

Sections for repeal.

- §339.1
- §339.2
- §339.3
- §339.4
- §339.5
- §339.6

Sections for Repeal:

CHAPTER 339

TOXICOLOGY

SUBCHAPTER A

VETERANS AGENT ORANGE ASSISTANCE PROGRAM

~~§339.1. Introduction.~~ The department has adopted these sections to administer a program to assist veterans who have been exposed to certain chemical defoliants or herbicides or other causative agents, including agent orange.

~~339.2. Definitions.~~

~~The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~–(1) Agent orange—The herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.~~
- ~~–(2) Commissioner—Texas Commissioner of Health.~~
- ~~–(3) Department—Texas Department of Health.~~
- ~~–(4) Program—The program to assist veterans who have been exposed to certain chemical defoliants or herbicides or other causative agents, including agent orange.~~
- ~~–(5) Veteran—A person who was a resident of this state at the time of his induction into the armed forces of the United States of America, or was a resident of this state as of March 31, 1981, who served in Vietnam, Cambodia, or Laos during the Vietnam conflict.~~

~~339.3. General Description of Program.~~

- ~~(a) A veteran who believes he may have been exposed to agent orange or other chemical agents may request his attending physician to submit a report to the department on a form provided by the department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department. Veterans reported are provided a questionnaire by the department to be returned to the department.~~
- ~~(b) The department and the health science centers and other medical facilities of the University of Texas System are cooperating to refer veterans for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including agent orange; and to provide veterans with fat tissue biopsies, genetic counseling, and genetic screening.~~
- ~~(c) The department, in consultation and cooperation with a board-certified medical toxicologist, designated by the commissioner, prepares reports and conducts epidemiological studies on veterans who have cancer or other medical problems associated with exposure to chemical defoliants or herbicides or other causative agents, including agent orange.~~
- ~~(d) The commissioner is the chief administrative officer for the program. In his absence, for any cause, the deputy commissioner for professional services has the duties assigned to the commissioner.~~
- ~~(e) An individual from each health science center and other medical facilities of the University of Texas System, designated by the vice-chancellor for health affairs of the University of Texas System, works with the department in the development and implementation of a cooperative program by coordinating the following:
  - ~~–(1) develop a list of agencies and procedures to be used in referring veterans for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including agent orange;~~
  - ~~–(2) genetic screening protocols and standardized fat biopsy site and laboratory methodology;~~
  - ~~–(3) genetic counseling appropriate to the medical problem identified;~~
  - ~~–(4) minimum data to be acquired for use in epidemiological studies by the department;~~
  - ~~–(5) agreement as to which veterans are referred by the department to which medical facility for genetic screening, fat tissue biopsies, and genetic counseling;~~
  - ~~–(6) administrative procedures for orderly and effective management of veterans' records and reports; and~~~~

~~-(7) implementation of the legislative intent that state agencies bearing the responsibility for veterans services and state agencies involved in genetic screening coordinate their activities and expenditure of funds to assist in the implementation of the program.~~

~~(f) The department shall report to the executive and legislative budget offices on the implementation of the coordinated effort among the various state agencies at the close of each fiscal year.~~

#### ~~339.4 Confidentiality and Consent.~~

~~(a) The department, upon receipt of a report prepared by and filed by the department entitled "Physician or Hospital Report of Veteran to Agent Orange Assistance Program," which follows this section, from a physician or hospital, shall provide the veteran a questionnaire prepared by and filed by the department entitled "Veteran's Agent Orange Questionnaire," which follows this section, to be submitted. This questionnaire shall contain detailed information in establishing possible exposure as well as medical, family, and occupational history. The identity of the veteran reported and submitting the completed questionnaire may not be disclosed unless the veteran consents to the disclosure.~~

~~(b) The identity of a veteran reported to the department by a physician or hospital may not be disclosed without the written consent of the veteran on a form entitled "Consent to Disclosure of Veteran's Identity Under the Agent Orange Assistance Program," which follows this section, which is prepared by and filed by the department.~~

~~(c) The inclusion of a veteran in the epidemiological studies conducted by the department must be consented to in writing by the veteran on a form entitled "Consent Form for Epidemiological Studies Under the Agent Orange Assistance Program," which follows this section, which is prepared by and filed by the department.~~

~~(d) All military and medical records pertaining to a veteran may be disclosed as authorized by law to the veteran or his or her personal representative upon request. The same records may be disclosed to other individuals or parties as authorized by law and on a "need to see basis" only. The commissioner or his designee will disclose the records on a "need to see basis" only when the best interests of the veteran are to be served.~~

~~(e) Statistical information which contains no individual identifiers collected under these sections is public information.~~

[Attached Graphic](#)

#### ~~339.5 Role of the Attorney General of Texas~~

~~The Attorney General of Texas has authority under Texas Civil Statutes, Article 4447w, to bring a class action in certain instances for the release of information and medical records pertaining to the veterans. As such, the department will keep the Attorney General informed if the department, in assisting veterans, has difficulty securing the release of information or medical records.~~

#### ~~339.6. Physician and Hospital Immunity from Liability~~

~~A physician or hospital complying with these rules may not be held civilly or criminally liable for providing the information required under these sections.~~