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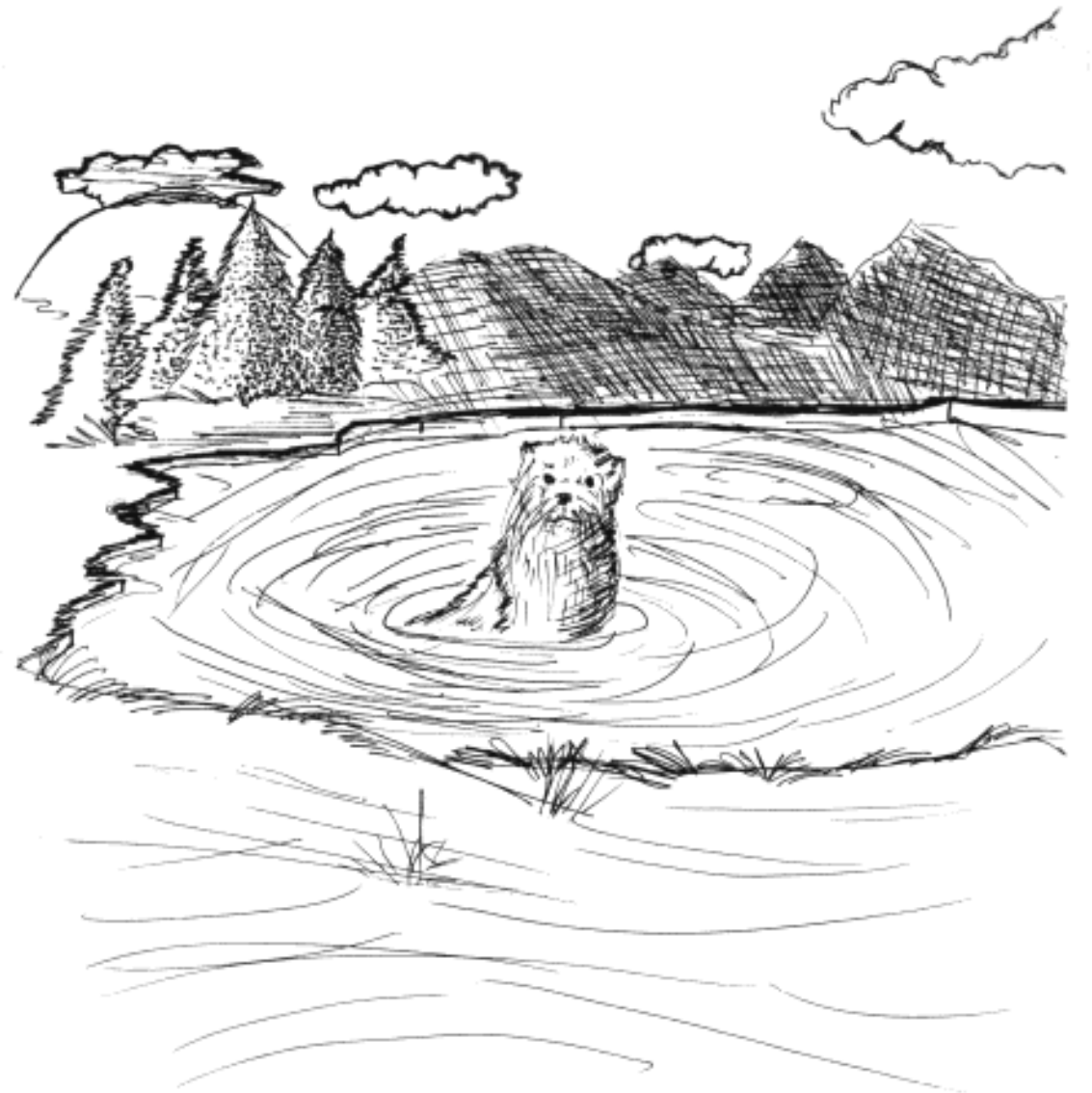

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5th Grade

Sam Houston Elementary School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

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EMERGENCY RULES

Texas Higher Education Coordinating Board

Program Development

19 TAC §§5.391, 5.401–5.403 11879

PROPOSED RULES

Texas Department of Agriculture

4 TAC §7.53 11881

Texas Historical Commission

Practice and Procedure

13 TAC §§26.2, 26.6, 26.17, 26.27 11882

Public Utility Commission of Texas

Practice and Procedure

16 TAC §22.181 11884

16 TAC §22.262, §22.264 11885

Substantive Rules

16 TAC §23.98 11886

Substantive Rules Applicable to Telecommunications Service Providers

16 TAC §26.5 11887

16 TAC §26.127 11890

Texas Higher Education Coordinating Board

Program Development

19 TAC §§5.391, 5.401–5.403 11892

Texas Education Agency

Adaptations for Special Populations

19 TAC §89.21, §89.24 11892

19 TAC §89.43, §89.47 11893

Texas State Board of Plumbing Examiners

Administration

22 TAC §361.6 11894

Licensing

22 TAC §365.1, §365.14 11895

Interagency Council on Early Childhood Intervention

Early Childhood Intervention

25 TAC §§621.22–621.24, 621.33 11897

25 TAC §621.32 11902

25 TAC §621.64 11902

Texas Department of Insurance

General Administration

28 TAC §1.415 11902

Texas Natural Resource Conservation Commission

Industrial Solid Waste and Municipal Hazardous Waste

30 TAC §§335.1, 335.17, 335.24, 335.29 11903

30 TAC §335.221 11911

30 TAC §335.431 11911

Texas Department of Criminal Justice

General Provisions

37 TAC 151.55 11912

Reports and Information Gathering

37 TAC §155.31 11913

WITHDRAWN RULES

Texas Department of Insurance

General Administration

28 TAC §1.415 11915

ADOPTED RULES

Office of the Secretary of State

Elections

1 TAC §81.72 11917

Texas Department of Economic Development

Memoranda of Understanding

10 TAC §§195.1–195.14 11917

10 TAC §§195.1–195.10 11918

Texas Historical Commission

Restricted Cultural Resource Information

13 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19, 24.21, 24.23 11920

Public Utility Commission of Texas

Substantial Rules

16 TAC 23.48 11921

Substantive Rules Applicable to Electric Service Providers

16 TAC §25.52 11921

Substantive Rules Applicable to Telecommunications Service Providers

16 TAC §26.51 11930

16 TAC §26.88 11932

16 TAC §26.89 11932

16 TAC §26.107 11933

Texas Higher Education Coordinating Board

Program Development

19 TAC §§5.151–5.159 11934
19 TAC §§5.151–5.161 11934
19 TAC §5.217 11940
19 TAC §§5.241-5.243 11941
19 TAC §5.246 11942
Program Development in Public Community/Junior College Districts and Technical Colleges
19 TAC §§9.141–9.146 11943
Proprietary Schools
19 TAC §§12.21, 12.22, 12.24 11945
19 TAC §§12.41, 12.44 11947
19 TAC §12.56 11950
19 TAC §12.80, §12.81 11950
19 TAC §12.82 11951
Campus Planning
19 TAC §17.45 11951
Texas Education Agency
Adaptations for Special Populations
19 TAC §89.71 11951
Texas Board of Chiropractic Examiners
Licenses and Renewals
22 TAC §73.7 11952
Rules of Practice
22 TAC §75.7 11952
Provisional Licensure
22 TAC §79.1, §79.3 11953
Board of Nurse Examiners
Advanced Practice Nurses with Limited Prescriptive Authority
22 TAC §222.1, §222.4 11954
Texas Optometry Board
Examinations
22 TAC §271.1 11955
Interpretations
22 TAC §279.17 11955
Interagency Council on Early Childhood Intervention
Early Childhood Intervention
25 TAC §§621.1–621.3, 621.5 11956
25 TAC §621.61, §621.63 11957
Texas Department of Insurance
Property and Casualty Insurance
28 TAC §5.4604 11957
Texas Commission on Fire Protection
Forms
37 TAC §§433.1, 433.3, 433.5, 433.7 11963
Voluntary Regulation of State Agencies and State Agency Employees
37 TAC §491.1 11963
Voluntary Regulation of Federal Agencies and Federal Agency Employees
37 TAC §493.1 11963
Texas Department of Human Services
Personal Care Facilities
40 TAC §§92.10, 92.12, 92.18 11964
40 TAC §92.41 11965
40 TAC §92.125 11965
40 TAC §92.125, §92.127 11965
Texas Rehabilitation Commission
Development Disabilities Program
40 TAC §109.7 11967

RULE REVIEW

Proposed Rule Reviews
State Council on Competitive Government 11969
Interagency Council on Early Childhood Intervention 11969
Texas Education Agency 11969
State Finance Commission 11970
General Land Office 11970
Texas Department of Human Services 11971
Texas Natural Resource Conservation Commission 11971
Texas Optometry Board 11972
Public Utility Commission of Texas 11972
School Land Board 11973
Adopted Rule Reviews
Interagency Council on Early Childhood Intervention 11973
Texas Education Agency 11974
Texas Commission on Fire Protection 11974
Texas Department of Human Services 11975

TABLES AND GRAPHICS

Tables and Graphics
Tables and Graphics 11977

OPEN MEETINGS

.....11981

IN ADDITION

Texas Aerospace Commission

Notice of Request for Qualifications.....11983

Texas Department of Agriculture

Notices of Public Hearing.....11984

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program 11984

Comptroller of Public Accounts

Correction of Error.....11986

Notice of Request for Proposals.....11986

Office of Consumer Credit Commissioner

Notice of Rate Ceilings 11986

Texas Credit Union Department

Texas Department of Criminal Justice

Notice to Bidders - Coffield Unit.....11987

Notice to Bidders - Mark Michael Unit 11987

Notice to Bidders - Revision 11988

Texas Education Agency

Grant Application Requests-Standard Application System Concerning Public Charter Schools, 1998–1999.....11988

Request for Proposals Concerning Services to Assist in the Design and Implementation of Educational Technology Pilot Programs11989

Employees Retirement System

Correction of Error.....11989

General Services Commission

Notice to Bidders for Project Number 98-010-405 - Houston Regional Headquarters.....11990

Request for Qualifications for Architectural/Engineering Services, Project Number 99–016–303.....11990

Texas Department of Health

Licensing Action for Radioactive Materials.....11991

Notice of Intent to Revoke Radioactive Material Licenses 11994

Texas Department of Housing and Community Affairs

Notices of Administrative Hearings.....11994

Notice of Application Availability.....11995

Request for Proposals.....11995

Texas Department of Human Services

Notice of Award-Integrated Long Term Care (LTC) Network Pilot.....11996

Public Meeting on the Integrated Long Term Care (LTC) Network Pilot-Feasibility Study.....11996

Texas Department of Insurance

Notice.....11996

Third Party Administrators.....11997

Texas State Library and Archives Commission

Quarterly Report of Consultant Contract Reports Received by the Texas State Library.....11997

Texas Natural Resource Conservation Commission

Enforcement Orders 11997

Notice of Application to Appropriate Public Waters of the State of Texas.....11999

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.....11999

Notice of Request for Nominations.....12001

Texas Board of Pardons and Paroles

Correction of Error.....12002

Public Utility Commission of Texas

Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25 12002

Notice of Application for Amendment to Service Provider Certificate of Operating Authority 12002

Notice of Application to Amend IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103.....12002

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27 12002

Notice of Petition for Rulemaking.....12003

Public Notice of Amendment to Interconnection Agreement....12003

Public Notices of Interconnection Agreements.....12003

Texas Council on Purchasing from People with Disabilities

Memorandum of Agreement between the Texas Council on Purchasing from People with Disabilities and TIBH Industries, Inc.....12005

Texas State Board of Examiners of Psychologists

Notice of Hearing.....12005

Texas Department of Transportation

Request for Qualifications.....12006

Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation

Notice of Intent.....12006

University of Houston

Consultant Proposal Request.....12007

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. 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 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter S. Transfer of Lower Division Course Credit

19 TAC §§5.391, 5.401–5.403

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 5, Subchapter S, §§5.391, 5.401–5.403, concerning Core Curriculum Transfer and Field of Study Curricula. The amendments to the rule are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to carry out the provisions of Senate Bill 148 of the 75th Legislature, directing the Coordinating Board to develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum.

The amendments to the rules are proposed under Texas Education Code, Subchapter S, Section 61.822.

§5.391. Requirements and Limitations.

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

(d) Each institution shall be required to accept in transfer into a baccalaureate degree the number of lower division credit hours in a major which are allowed for their non-transfer students in that major; however,

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

(3) A university may deny the transfer of credit in courses with a grade of "D" as applicable to the student's field of study courses, core curriculum courses, or major.

(e)-(f) (No change.)

§5.401. General Provisions.

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

(c) This subchapter applies specifically to academic courses and degree programs, and does not apply to technical courses or degree programs.

§5.402. Core Curriculum.

(a) In accordance with Texas Education Code, Chapter 61, Subchapter S, each general academic institution and community/technical college shall design and implement a core curriculum[~~, including specific courses comprising the curriculum,~~] of no less than 42 lower-division semester credit hours. [~~No institution may require a core curriculum of more than 42 semester credit hours without Board approval.~~]

(b)-(j) (No change.)

§5.403. Core Curricula Larger than 42 Semester Credit Hours.

(a) An institution may adopt, without Board approval, a core curriculum under this subchapter in excess of 42 semester credit hours, but no more than 48 semester credit hours, if the courses in excess of 42 semester credit hours are selected from the first five component areas of Chart II of Section 5.402 (excluding the Institutionally Designated Option) and are approved by the institution's governing board. [~~The board will consider approval of a core curriculum from a general academic institution, community college, or technical college if it has been previously approved by the institution's Board of Regents or Board of Directors and is consistent with the following:~~]

(b) The Board will consider approval of a core curriculum in excess of 48 semester credit hours, or a core curriculum of more than 42 semester credit hours but not greater than 48 semester credit hours with courses selected from component areas other than the first five component areas of Chart II of Section 5.402 if:

(1) It has been previously approved by the institution's governing board;

(2) [~~(1)~~] The institution has provided to the Board [~~must provide~~] a narrative justification of the need and appropriateness of a larger core curriculum that is consistent with its role and mission; and

(3) [~~(2)~~] No proposed upper-division core course is substantially comparable in content or depth of study to a lower-division course listed in the "Texas Common Course Numbering System."

Filed with the Office of the Secretary of State,on November 13, 1998.

TRD-9817517
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: November 13, 1998
Expiration date: March 13, 1999
For further information, please call: (512) 483–6162

♦ ♦ ♦

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

Subchapter E. Regulated Herbicides

4 TAC §7.53

The Texas Department of Agriculture (the department) proposes an amendment to §7.53, concerning special county provisions for the use of regulated herbicides. The amendment is proposed at the request of the Brazoria County Commissioner's Court on behalf of agricultural producers in Brazoria county to allow for the use of certain regulated herbicides year round. The amendment allows for all formulations of 2,4-D, to be aerially applied throughout the year in that portion of Brazoria County located east of the Brazos River.

Phil Tham, deputy assistant commissioner for pesticides, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section, as amended.

Mr. Tham 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 enforcing the sections will be increased efficiency and effectiveness in brush control in Brazoria County. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Phil Tham, Deputy Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal amendments in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §76.144, which provides that the Texas Department of Agriculture with the authority to adopt rules for concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with the Texas Agriculture Code, §76.144(a).

The Texas Agriculture Code, Chapter 76, is affected by the proposal.

§7.53. County Special Provisions.

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

(e) Brazoria County.

(1) For that portion of Brazoria County east of the Brazos River [~~both north of State Highway 35 and west of Highway 288, the aerial application of~~] all formulations of 2,4-D may be aerially applied throughout the year [~~, is prohibited between March 10th and September 15th of each year~~].

(2) (No change.)

(3) For that portion of Brazoria County not included in paragraph (1) of this subsection, the aerial application of regulated herbicides is prohibited between March 25th and August 1st of each year.

(4)-(5) (No change.)

(f)-(oo) (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 16, 1998.

TRD-9817579
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 463–7541

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 26. Practice and Procedure

13 TAC §§26.2, 26.6, 26.17, 26.27

The Texas Historical Commission (THC) proposes amendments to Sections 26.2, 26.6, 26.17, and 26.27, concerning Scope, Antiquities Advisory Board, Issuance and Restriction of Permits, and Disposition of Archeological Artifacts and Data. These changes are needed to clarify issues related to the protection of State Archeological Landmarks, to clarify the responsibilities, conflicts of interest, and term limitations of Antiquities Advisory Board members. They also provide a mechanism by which permit holders may potentially be granted additional extensions on the due dates for permits that are issued to them, and extend the final due date for which curatorial facilities must be accredited to hold artifacts collected under Antiquities Permits.

Curtis Tunnell, Executive Director of the THC, has determined that for the first five-year period the rule is in effect there should be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule amendments.

Mr. Tunnell has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will assist the Antiquities Advisory Board due to fewer turnovers in the membership of the board, and by insuring that archeologists that under permit have a means of extending due dates for permits under extenuating circumstances. There should be no effect on small businesses, and there should also be no fiscal implications for private citizens, due to these amendments. There may, however, be some fiscal impacts on curatorial facilities across the state if those institutions choose to become accredited by January of 2001, but those costs will vary depending on the current condition of their collection care.

Comments on the proposal may be submitted to Dr. James E. Bruseth, Deputy State Historic Preservation Officer, Texas Historical Commission, Archeology Division, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.* Any questions regarding these proposed amendments should be directed to Mark H. Denton, at the same address, or by calling (512) 463-5711.

The amendments are proposed under Section 442.005(q), Title 13 Part II of the Texas Government Code, and Section 191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statues, articles, or codes are affected by these amendments.

These rule amendments implement Section 442.005(b) of the Texas Government Code and Section 191.051 of the Texas Natural Resources Code.

§ 26.2. Scope.

State archeological landmarks include all sites, objects, buildings, pre-twentieth century shipwrecks and locations of historical, archeological, educational, or scientific interest including, but not limited to, prehistoric American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, natural history, government, or culture in, on, or under any of the lands of the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas. Section 191.092 of the Code provides that historical and archeological sites on lands belonging to any county, city, or other political subdivision of the State of Texas are state archeological landmarks and may not be taken, altered, damaged or destroyed, salvaged, or excavated without a permit from the committee. Also protected under the Antiquities Code of Texas are specially designated archeological landmarks on private property, as well as all American Indian or aboriginal paintings, hieroglyphic, or other marks or carvings on rock or elsewhere which pertain to early American Indian or aboriginal habitation of the country. The committee is further empowered to provide for a system of permits and contracts for [~~salvage of treasures embedded in the earth and~~] the excavation or study of archeological and historical sites and objects. Sections 191.002, 191.051, 191.091, 191.092, 191.093, and 191.094 of the Antiquities Code of Texas specifically discuss the interests of the State of Texas in the recordation, protection, preservation, and study of archeological sites in and on public lands, or under the public seas and waterways in the State of Texas. All publicly owned archeological sites in Texas have intrinsic historic values, and as such are protected under the Antiquities Code regardless of their size, character, or ability to yield data that will contribute important information on the history or prehistory of Texas. All such sites are protected under the Antiquities Code as State Archeological Landmarks regardless of whether they warrant official landmark designation. Therefore, all publicly owned sites are protected from vandalism, or other actions meant to take, alter, or destroy them, and information directly related to their specific locations is restricted from an open records requests. All archeological sites do not, however, contribute equally valuable scientific information on the history and prehistory of Texas, and some sites may not possess research values sufficient to warrant long term preservation, or archeological investigations beyond survey level recordation. Therefore, the issue of whether sites are significant and warrant preservation, and/or further research, (such as archeological testing and data recovery level investigations) is dealt with through both official landmark designations and permit issuance and regulation. Official State Archeological Landmark designation is an administrative procedure that provides for public notice of sites being considered for designation, and allows the land-owning or controlling public agency and the public the opportunity to have input into the designation process. The permit issuance and regulation procedures provide for an investigative and consultative process that allows the committee, permittee, land-owning agency, sponsor, principal investigator, and investigative firm a system by which sites can be documented and assessed to determine whether further investigations are necessary.

§26.6. Antiquities Advisory Board.

As provided for by the 74th Texas Legislature, within Section 442.005(r) of the Government Code of Texas (relating to the statutes of the Texas Historical Commission), the committee is authorized to create an Antiquities Advisory Board (hereafter referred to as the board). The board will be chaired by the Governor-appointed professional archeologist member of the Texas Historical Commission, and will make recommendations to the committee on issues related to the Antiquities Code of Texas. The Vice Chair will be elected each year by the board from within their membership. The board will also be composed of the following six membership positions: a [~~the~~] representative of the Texas Archeological Society, the president of the Council of Texas Archeologists, a state agency archeologist, a contract archeologist, the Governor-appointed professional architect member of the Texas Historical Commission, and the Governor-appointed professional historian member of the Texas Historical Commission. The contract archeologist, will be appointed by the committee, and will serve one three year term that expires on

February 1. The board will provide nominations to the committee for the selection of the contract archeologist position. The state agency archeologist will serve a two [~~one~~] year term that expires February 1, and the appointment must rotate between the state agencies that have staff archeologists. If the Governor does not appoint a professional archeologist, architect, and historian to the Texas Historical Commission, the committee will appoint such individuals to the board and they will serve for a term of two years or until replaced by a Governor-appointee(s).Specific duties of the board include providing recommendations on proposed State Archeological Landmark designations, and in resolving disputes regarding the issuance of Texas Antiquities Permits. The board shall convene immediately prior to each quarterly meeting of the committee unless otherwise requested by the board chair, and board meetings shall conform to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code and the Administrative Procedure Act, Texas Government Code 2001. The recommendations of the board will be brought to the committee by the board chair and/or one of the other committee members who serves on the board and whose area of expertise is related to the subject under consideration. The board will accomplish their specific duties in the following manner.

(1) Consider and discuss all proposed State Archeological Landmark designations, and any non-adjudicative issues or dispute related to Antiquities Permit issuance that are brought before them by the committee, Department of Antiquities Protection or Division of Architecture staff, members of the board, or the public.

(2) Function as preliminary mediators for the committee unless otherwise directed by the committee, or refused by a complainant(s).

(3) Vote on final recommendations related to appropriate issues of concern, and present those recommendations to the committee.

(4) Conflicts of interest.

(A) Any member of the board who [~~that~~] has a conflict of interest related to an issue that comes before the board shall recuse himself/herself from voting and participating in the discussion on that issue. A member of the Board who has a conflict of interest may respond to questions directed to them by seated members of the Board. Prior to any deliberations concerning the issue in which a member of the Board has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists and physically absent and recuse himself/herself from the decision-making process and neither vote directly, in absentia, nor by proxy in that matter. Board minutes must indicate which member recused himself/herself and the reason(s) for the recusal.

(B) For the purpose of these rules a conflict of interest would result if a vote by a member of the Board is likely to result in a financial benefit or personal gain for the following individuals:

(i) the member of the board:

(ii) any person of the member's immediate family, which includes spouse and any minor children; or

(iii) a business partner of the member; or

(iv) any organization for profit in which the member, or any person of clauses (ii) and (iii) of this subparagraph, that is serving or is about to serve as an officer, director, trustee, partner, or employee. A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of real or potential value.

(5) The Board shall follow parliamentary authority according to Robert's Rules of Order, Newly Revised, except where specifically provided for otherwise in these rules.

§26.17. Issuance and Restrictions of Permits.

(a) Review by controlling entities. It is the responsibility of the permit applicant to obtain all necessary permissions and signatures prior to submitting a permit application.

(b) Special regulations. When a permit is issued, it will contain all special regulations governing that particular investigation; it must be signed by the directors of either the Department of Antiquities Protection or the Division of Architecture of the Texas Historical Commission, or their designated representative.

(c) Permit period. No permit will be issued for less than one year, nor more than ten years, but may be issued for any length of time as deemed necessary by the committee in consultation with the principal investigator, sponsor, and permittee.

(d) Transferal of permits. No permit issued by the committee will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without the consent of the committee.

(e) State site survey forms. Standard state site survey forms for all sites recorded as a result of activities undertaken through an Antiquities Permit will be completed and submitted to the Texas Archeological Research Laboratory at the University of Texas in Austin, upon the completion of field work.

(f) Permit expiration. The expiration date is specified in each permit and is the date by which all terms and conditions must be completed for that permit. It is the responsibility of the permittee(s), sponsors, investigative firms, and principal investigators prior to the expiration date listed on the permit to meet any and all permit submission terms and conditions.

(1) Expiration notification. After October 1, 1992, principal investigators, co-principal investigators, investigative firms, permittee(s), and sponsors will be notified 60 days in advance of permit expiration. The notice regarding expired permits shall state the pending default date, list the terms and conditions to be met to complete permit requirements, and request submission of a good faith plan outlining how the holder will complete unmet Antiquities Permit obligations.

(2) Expiration extension. Permits may be extended once for no less than one year and no more than ten years as deemed necessary by the committee, in consultation with the principal investigator, investigative firm, sponsor, or permittee.

(g) Expiration responsibilities. Investigative firms and permittees must insure that a principal investigator is assigned to a permit at all times, regardless of whether the permit is active or has expired. Both the principal investigator and investigative firm should insure that a new principal investigator is assigned to the permit, if for any reason the original principal investigator must leave the project. The assignment of a new principal investigator must be approved by the committee, and agreed to by both the original and the new (proposed) principal investigator.

(h) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the committee and all parties will be notified when amendments are approved. In addition, upon review by the Antiquities Advisory Board, the committee may by a majority vote of its members, approve or disapprove an additional extension of the final due date of an Antiquities Permit, beyond the single extension that the staff of the Texas Historical Commission is

authorized to issue under Section 26.17 of this title, provided that the following conditions are met:

(1) the principal investigator (PI), investigative firm (IF), and/or the project sponsor (PS) and permittee (PE) listed under an Antiquities Permit provide both written documentation to, and oral presentations before, the Antiquities Advisory Board justifying why an additional permit due-date extension is warranted;

(2) the justification for the additional extension must show that the additional extension is needed due to circumstances beyond thecontrol of the PI, IF, and/or PS and PE. Examples include, but are not limited to; funding problems, death of the PI, and artifact curation problems, and;

(3) the PI and IF, if they are the parties requesting the extension, are responsible for notifying the PS and PE of the request for an additional extension of the final permit due date.

(i) Permit cancellation. The committee may cancel an Antiquities Permit, and any appeals of such cancellations must be made before the State Office of Administrative Hearings. One or more of the following conditions must exist before a permit may be canceled:

(1) the death of the principal investigator [~~or co-principal investigator~~];

(2) failure of the project sponsor to fully fund investigation;

(3) cancellation of the project by the sponsor or permittee prior to the completion of the archeological field investigations, and/or;

(4) violation of Section 26.3 of this title (relating to Compliance with Rules and Regulations) and/or;

(5) destruction of the permit area or associated cultural resources due to natural causes, prior to the substantive completion of the investigations being performed under the permit.

(j) Permit censuring. The committee may censure a principal investigator and investigative firm if it is found that two or more permit application offenses have occurred in one calendar year. Permit application offenses result when investigations are performed without first obtaining a permit from the committee. Permit censuring will render a principal investigator and investigative firm ineligible for issuance of another permit for six months after a finding by the board that two or more permit application offenses have occurred in one calendar year.

§26.27. Disposition of Archeological Artifacts and Data.

(a) Processing. Investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, and preserving all collections, specimens, samples, and records, and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the committee are contained in the Texas Natural Resources Code of 1977, Title 9, Chapter 191, Section 191.052 (b). The committee will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the policy of the committee that such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks.

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial institution approved by the committee. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) By January 1, 2001 [~~2000~~], institutions that curate artifacts recovered under Antiquities Permit(s) must be accredited through the Council of Texas Archeologists Accreditation and Review Council [~~Committee~~] accreditation program. Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the committee and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the committee. A variety of special, short-term exhibits may also be authorized by the committee.

(d) (No change.)

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

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TRD-9817572
Curtis Tunnell
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463–5711

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter J. Summary Proceedings

16 TAC §22.181

The Public Utility Commission of Texas proposes an amendment to §22.181 relating to Dismissal of a Proceeding. Project Number 17709 has been assigned to this proceeding. The proposed amendment will provide the presiding officer more flexibility in dismissing proceedings, with or without prejudice.

Paula Mueller, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Mueller has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be simplified proceedings for concluding certain cases. There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Mueller has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The Appropriations Act of 1997, House Bill 1, Article IX, §167 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting these sections continues to exist in considering the proposed amendments. All comments should refer to Project Number 17709 and reference Procedural Rules, Subchapter J.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.181. Dismissal of a Proceeding.

(a) Motions for Dismissal.

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

(3) If the presiding officer determines that the proceeding should be dismissed, the presiding officer may [~~shall~~] prepare a Proposal for Decision to that effect , or issue an order dismissing the proceeding [~~and, if requested, shall set an expedited schedule for exceptions and replies~~]. The commission shall consider the Proposal for Decision as soon as is practicable.

(4) An order dismissing a proceeding under paragraph (3) of this subsection may be appealed pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

(b) (No change.)

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

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TRD-9817532

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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Subchapter N. Decision and Orders

16 TAC §22.262, §22.264

The Public Utility Commission of Texas proposes amendments to §22.262 relating to Commission Action After a Proposal for Decision and §22.264 relating to Rehearing. Project Number 17709 has been assigned to this proceeding. The proposed amendments conform these sections to current commission practice; amend §22.262(d)(4) to clarify that it takes two votes to grant a request for oral argument; moves the last sentence of §22.262(d)(3) to the end of (d)(4); and amends §22.264 to clarify that it takes two votes to consider a motion for rehearing at an open meeting.

Paula Mueller, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Mueller has determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be rules that more accurately reflect commission practice and requirements. There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Mueller has also determined that for each year of the first five years the proposed sections are in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the sections.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The Appropriations Act of 1997, House Bill 1, Article IX, §167 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting these sections continues to exist in considering the proposed amendments. All comments should refer to Project Number 17709 and reference Procedural Rules, Subchapter N.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.262. Commission Action After a Proposal for Decision.

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

(d) Oral Argument Before the Commission.

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

(3) A request for oral argument shall be made in a separate written pleading, filed with the commission's filing clerk. The request shall be filed no later than 3:00 p.m. on the seventh working day preceding the date upon which the commission is scheduled to consider the case. [~~Not more than two days before the commission is scheduled to consider the application, the parties may contact the secretary to determine whether a request for oral argument has been granted.~~]

(4) Upon the filing of a motion for oral argument, the Office of Policy Development [~~secretary~~] shall send separate ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting. An affirmative vote by two commissioners is required to grant oral argument. Not more than two days before the commission is scheduled to consider the case, the parties may contact the Office of Policy Development to determine whether a request for oral argument has been granted.

(5) (No change.)

(e) (No change.)

§22.264. Rehearing.

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

(c) Upon the filing of a motion for rehearing, the Office of Policy Development [~~secretary~~] shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. An affirmative vote by two commissioners is required for consideration of the motion at an open meeting.

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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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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Chapter 23. Substantive Rules

Subchapter H. Telephone

16 TAC §23.98

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Public Utility Commission of Texas (commission) proposes the repeal of §23.98 relating to Abbreviated Dialing Codes. Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.98 will be duplicative of proposed new §26.127 of this title (relating to Abbreviated Dialing Codes) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Mr. Eric White, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. White has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Mr. White has also determined that for each year of the first five years the repeal is in effect there will be no impact on employment in the geographic area affected by the repeal of this section.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.98.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§23.98. Abbreviated Dialing Codes.

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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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936–7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

The Public Utility Commission of Texas (commission) proposes an amendment to §26.5 relating to Definitions and new §26.127 relating to Abbreviated Dialing Codes. Project Number 17709 has been assigned to this proceeding. The proposed new section replaces §23.98 of this title (relating to Abbreviated Dialing Codes). The section defines the assigned uses of NII dialing codes within Texas and implements the First Report and Order in 12 FCC Rcd. 5572, CC Docket Number 92-105, FCC 97-51, *In the Matter of the Use of NII Codes and Other Abbreviated Dialing Arrangements.* The proposed amendment to §26.5 moves the definitions found in §23.98 to the general definitions section, with the exception of the definition for "government entity" which will remain section specific.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

The proposed new section reflects a different section designation due to the reorganization of the rules. Other than moving the definitions to §26.5 and adding the commission's toll free number to the notice requirement in subsection (f)(5)(B), no substantive changes have been made to the language of §23.98 as proposed for movement to §26.127 or in the definitions moved to §26.5. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to existing §23.98 may obtain a redlined version from the commission's Central Records under Project Number 17709.

Mr. Eric White, assistant general counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect the fiscal implications for state or local government will remain the same as under existing §23.98. There are no changes proposed to §26.127, as it replaces §23.98, that will add any fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. White has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public safety through the uniform access to emergency services afforded by 911; to alleviate the burden on the 911 system due to non-emergency calls by assigning 311 for non-emergency governmental services; end user access to directory assistance through the 411 code; and certificated telecommunications utilities' use of 611 for repair service and 811 for business office contact, as well as the use of unassigned N11 codes for internal testing and maintenance functions. There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed in addition to costs that may already be imposed by existing §23.98.

Mr. White has also determined that for each year of the first five years the proposed sections are in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the sections.

Comments on the proposed sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. The commission also invites specific comments regarding the §167 requirement as to whether the reason for adopting §23.98 continues to exist in proposed §26.127. All comments should refer to Project Number 17709 - §26.127 relating to Abbreviated Dialing Codes.

Subchapter A. General Provisions

16 TAC §26.5

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

§26.5. Definitions.

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

(1)-(181) (No change.)

(182) Selective routing - The feature provided with 311 service by which 311 calls are automatically routed to the 311 answering point for serving the place from which the call originates.

(183) [~~(182)~~] Separation - The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(184) [~~(183)~~] Service - Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(185) [~~(184)~~] Service connection charge - A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(186) [~~(185)~~] Service provider certificate of operating authority (SPCOA) reseller - A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an incumbent local exchange company (ILEC) or by a certificate of operating authority (COA) holder or by a service provider certificate of operating authority (SPCOA) holder.

(187) [~~(186)~~] Service restoral charge - A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(188) [~~(187)~~] Serving wire center (SWC) - The certificated telecommunications utility designated central office which serves the access customer's point of demarcation. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(189) [~~(188)~~] Signaling for tandem switching - The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(190) [~~(189)~~] Small certificated telecommunications utility (CTU) - A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(191) [~~(190)~~] Small local exchange company (SLEC) - Any incumbent certificated telecommunications utility as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(192) [~~(191)~~] Small incumbent local exchange company (Small ILEC) - An incumbent local exchange company that is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in Texas.

(193) [~~(192)~~] Spanish speaking person - a person who speaks any dialect of the Spanish language exclusively or as their primary language.

(194) [~~(193)~~] Special access - A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(195) [~~(194)~~] Stand-alone costs - The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(196) [~~(195)~~] Station - A telephone instrument or other terminal device.

(197) [~~(196)~~] Study area - An incumbent local exchange company's (ILEC's) existing service area in a given state.

(198) [~~(197)~~] Supplemental services - Telecommunications features or services offered by a certificated telecommunications utility for which analogous services or products may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Area), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(199) [~~(198)~~] Suspension of service - That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(200) [~~(199)~~] Switched access - Access service that is provided by certificated telecommunications utilities (CTUs) to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(201) [~~(200)~~] Switched access demand - Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(202) [~~(201)~~] Switched access minutes - The measured or assumed duration of time that a certificated telecommunications utility's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(203) [~~(202)~~] Switched transport - Transmission between a certificated telecommunications utility's central office (including tandem- switching offices) and an interexchange carrier's point of presence.

(204) [~~(203)~~] Tandem-switched transport - Transmission of traffic between the serving wire center and another certificated telecommunications utility office that is switched at a tandem switch and charged on a usage basis. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(205) [~~(204)~~] Tariff - The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(206) [~~(205)~~] Tel-assistance service - A program providing eligible consumers with a 65% reduction in the applicable tariff rate for qualifying services.

(207) [~~(206)~~] Texas Universal Service Fund (TUSF) - The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(208) [~~(207)~~] Telecommunications relay service (TRS) - A service using oral and print translations by either live or automated

means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(209) [~~(208)~~] Telecommunications relay service (TRS) carrier - The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(210) [~~(209)~~] Telecommunications utility -

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned pay telephone service; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(211) [~~(210)~~] Telephones intended to be utilized by the public - Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(212) [~~(211)~~] Telephone solicitation - An unsolicited telephone call.

(213) [~~(212)~~] Telephone solicitor - A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(214) [~~(213)~~] Test year - The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(215) [~~(214)~~] Tier 1 local exchange company - A local exchange company with annual regulated operating revenues exceeding $100 million.

(216) [~~(215)~~] Title IV-D Agency - The office of the attorney general for the state of Texas.

(217) [~~(216)~~] Toll blocking - A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(218) [~~(217)~~] Toll control - A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(219) [~~(218)~~] Toll limitation - Denotes both toll blocking and toll control.

(220) [~~(219)~~] Total element long-run incremental cost (TELRIC) - The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the certificated telecommunications utility's (CTU's) provision of other elements. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(221) [~~(220)~~] Transport - The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a dominant certificated telecommunications utility.

(222) [~~(221)~~] Trunk - A circuit facility connecting two switching systems.

(223) [~~(222)~~] Two-primary interexchange carrier (Two-PIC) equal access - A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(224) [~~(223)~~] Unbundling - The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(225) [~~(224)~~] Unit cost - A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(226) [~~(225)~~] Usage sensitive blocking - Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(227) [~~(226)~~] Virtual private line - Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(228) [~~(227)~~] Voice carryover - A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(229) [~~(228)~~] Volume insensitive costs - The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(230) [~~(229)~~] Volume sensitive costs - The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(231) [~~(230)~~] Wholesale service - A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(232) [~~(231)~~] Working capital requirements - The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(233) [~~(232)~~] "0-" call - A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(234) [~~(233)~~] "0+" call - A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(235) 311 answering point - A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(236) 311 service - A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(237) 311 service request - A written request from a governmental entity to a certificated telecommunications utility requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(238) 311 system - A system of processing 311 calls.

(239) 911 system - A system of processing emergency 911 calls, as defined in Tex. Health & Safety Code §772.001, as may be subsequently amended.

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, 1998.

TRD-9817523
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 936–7308

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Subchapter F. Regulation of Telecommunications Service

16 TAC §26.127

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.001 which authorizes the commission to formulate and apply rules to protect the public interest due to federal administrative actions.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §52.001.

§26.127. Abbreviated Dialing Codes.

(a) The following abbreviated dialing codes may be used in Texas:

(1) 311 - Non-Emergency Governmental Service;

(2) 411 -

(A) Directory Assistance; and

(B) Directory Assistance Call Completion.

(3) 611 - Repair Service;

(4) 711 -Telecommunications Relay Service;

(5) 811 - Business Office; and

(6) 911 - Emergency Service.

(b) The following N11 dialing codes are not assigned for use in Texas:

(1) 211; and

(2) 511.

(c) A certified telecommunications utility (CTU) within the State of Texas may assign or use N11 dialing codes only as directed by the commission.

(d) An unassigned N11 dialing code may be used by a CTU for internal business and testing purposes such as inspector ringback, line opener, dual tone multifrequency testing (DTMF Test), automatic number announcement, and 911 system cutover.

(e) The following limitations apply to a CTU's use of N11 dialing codes for internal business and testing purposes:

(1) use may not interfere with the assignment of such numbers by the FCC and the North American Numbering Plan (NANP); and

(2) use of an N11 dialing code must be discontinued on short notice if the number is reassigned on a statewide or nationwide basis.

(f) 311 service.

(1) Scope and purpose. This subsection applies to the assignment, provision, and termination of 311 service. Through this subsection, the commission strives to strengthen the 911 system by alleviating congestion on the 911 system through the establishment of a framework for governmental entities to implement a 311 system for non-emergency police and other governmental services.

(2) Definition. The term "governmental entity" when used in this subsection means any county, municipality, emergency communication district, regional planning commission, appraisal district, or any other subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 911, or other emergency service

as defined in Texas Health and Safety Code §771.001, as may be subsequently amended.

(3) A certificated telecommunications utility must have a commission-approved application to provide 311 service.

(4) Requirements of application by certificated telecommunications utility.

(A) Applications, tariffs, and notices filed under this subsection shall be written in plain language, shall contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and shall conform to the requirements of §23.26 of this title (relating to New and Experimental Services) or §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system shall be approved.

(D) All applications for 311 service shall include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) Notice. The presiding officer shall determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The certificated telecommunications utility shall file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service. This copy of the proposed notice shall be filed with the commission not later than ten days after the certificated telecommunications utility receives the 311 service request; and

(B) The proposed notice shall include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(6) A certificated telecommunications utility may provide 311 service only to governmental entities.

(7) A 311 service request shall start the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket Number 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls shall not be completed over the 911 network or use the 911 database.

(9) The 311 network shall not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a certificated telecommunications utility which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non- blockable information-gathering feature for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call- and line-blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a certificated telecommunications utility uses Caller Identification (Caller ID) services or other equivalent feature to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission shall have the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission shall have the authority to decide which governmental entity shall provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission shall consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service(s), including but not limited to the proposed public education portion, to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service (i.e., the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service).

(13) When termination of 311 service is desired, the certificated telecommunications utility shall file a notice of termination with the commission that contains:

(A) proposed notice to the affected area of the termination of 311 service; and

(B) the program to educate the affected public of the termination of 311 service.

(14) The commission, after receiving the certificated telecommunications utility's proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register.*

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, 1998.

TRD-9817524
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 936–7308

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter S. Transfer of Lower Division Course Credit

19 TAC §§5.391, 5.401–5.403

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 5, Subchapter S, §§5.391, 5.401–5.403, concerning Core Curriculum Transfer and Field of Study Curricula. The proposed amendments would carry out the provisions of Senate Bill 148 of the 75th Legislature, directing the Coordinating Board to develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum. The proposed rules offer those guiding principles but do not prescribe specific courses, a responsibility designated in the bill to each individual college and university.

Bill Sanford, Assistant Commissioner for Universities has determined that for the first five- year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Sanford also has determined that for the first five years the rule is in effect the public benefit will be that it will provide for a common academic core of lower-division courses that could be readily transferred among public higher education institutions as individual courses or as a completed block; it will reduce obstacles to transfer and provide a more comprehensive procedure for the resolution of transfer disputes; it will provide for the evaluation and monitoring of each institution's transfer practices; and it will remove the problem of the state paying twice for the same courses. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Subchapter S, Section 61.822, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Transfer of Lower Division Course Credit.

There were no other sections or articles affected by the proposed amendments.

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, 1998.

TRD-9817518
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: January 29, 1999
For further information, please call: (512) 483–6162

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Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations

Subchapter B. Adult Basic and Secondary Education

19 TAC §89.21, §89.24

The Texas Education Agency (TEA) proposes amendments to §89.21 and §89.24, concerning adult basic and secondary education. The sections establish definitions and diploma requirements relating to adult education. The proposed amendments consist of technical corrections that number definitions in 19 TAC §89.21 and correct a cross-reference in 19 TAC §89.24 from Chapter 75 to Chapter 74 (relating to Curriculum Requirements).

Mr. Felipe Alanis, deputy commissioner for programs and instruction, 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. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be continued guidance for the efficient operation of adult education programs and effective services to students. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted in writing to Criss Cloudt, Policy Planning 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 sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.102(c)(16) and §29.253, which authorizes the State Board of Education to adopt rules for approving adult education programs.

The proposed amendments implement the Texas Education Code, §7.102(c)(16) and §29.253.

§89.21. Definitions.

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

(1) Adult education - Basic and secondary instruction and services for adults.

(A) Adult basic education - Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who: have minimal competence in reading, writing, and solving quantitative problems; are not sufficiently competent to speak, read, or write the English language; or are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education - Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(2) Contact time -

(A) The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(B) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(3) Student contact hour - 60 minutes.

(4) Cooperative/consortium adult education program - A community or area partnership of educational, work force development, human service entities, and other agencies that agree to collaborate for the provision of adult education and literacy services.

(5) Fiscal agent - The local entity that serves as the contracting agent for an adult education program.

(6) Eligible grant recipient - Eligible grant recipients for adult education programs are those entities specified in statutes. Eligible grant recipients must have at least one year of experience in providing adult education and literacy services.

§89.24. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under Chapter 74 [~~Chapter 75~~] of this title (relating to Curriculum Requirements) with the following exceptions.

(1)-(3) (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 16, 1998.

TRD-9817543

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: December 27, 1998

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

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Subchapter C. General Educational Development

19 TAC §89.43, §89.47

The Texas Education Agency (TEA) proposes amendments to §89.43 and §89.47, concerning general educational development. The sections establish definitions and requirements for the Texas certificate of high school equivalency. The proposed amendments would discontinue fee exemptions for residents and inmates of city, county, state, and federal health and correctional facilities and add language stating that fees include issuance of copies of test scores, as stated in the Texas Education Code, §7.111.

General Educational Development (GED) user fees were established with the intent that persons using the testing service would pay for the cost of processing and maintaining records. Fees to cover administrative costs were first established at $5 and are currently $10. During 1997 and 1998, the number of persons taking the GED test has declined and revenue from fees has become inadequate to cover administrative costs. Fee exemptions have applied almost entirely to inmates. The proposed amendment to 19 TAC §89.47 would delete language providing for fee exemptions. Additional amendments would delete obsolete language in 19 TAC §89.43 and add language in 19 TAC §89.47 to bring the rule in agreement with the Texas Education Code, §7.111, that states fees are for the issuance of certificates and copies of test scores.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. Current GED user fees, required by the Texas Education Code, §7.111, are insufficient to cover administrative costs. By rescinding exemptions for inmates, TEA projects that revenue will increase by $100,000 for FYs 2000-2003, enabling TEA to continue providing same-level services. Rescinding fee exemptions will require inmates to pay user fees; current fees are $10. Facilities housing inmates may opt to pay these fees, but are not required by law; thus, any fiscal implications to agencies or facilities cannot be determined. However, if entities decide to pay fees for inmates in Texas Department of Criminal Justice (TDCJ) facilities or in Texas Youth Commission (TYC) or city or county jails, there will be a fiscal impact at the rate of $10 per test-taker. Based on data from previous years, about 50% of inmate testing is conducted at TDJC facilities served by Windham School District, 10% at TYC facilities, 10% at federal prisons, and 30% at private, for-profit prisons and city or county jails.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the continuation of the Texas high school equivalency testing program at no cost to the state and user fees would be equitable throughout the testing population. There will not be an effect on small businesses. It is assumed that private, for-profit prisons are not operated by small businesses; however, some may be contractually required to provide testing to inmates at no charge. For businesses required to pay testing expenses, the cost will be $10 per test-taker. There is an anticipated economic cost to persons who are required to comply with the proposed sections. The TEA estimates 10,000 inmate test-takers will pay user fees of $10 each, resulting in anticipated costs of $100,000 for FYs 2000-2003.

Comments on the proposal may be submitted in writing to Criss Cloudt, Policy Planning 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 sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.111, which authorizes the State Board of Education to adopt rules for the administration of high school equivalency examinations.

The proposed amendments implement the Texas Education Code, §7.111.

§89.43. Eligibility for a Texas Certificate of High School Equivalency.

(a) An applicant for a certificate of high school equivalency shall meet the following requirements.

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

(4) Minimum test scores. [~~The applicant must achieve a standard score of 40 or above on each of the five parts of the test or achieve an average standard score of 45 on all five parts of the test. Effective January 1, 1997, an~~] An applicant must achieve a standard score of 40 or above on each of the five parts of the test and achieve an average standard score of 45 on all five parts of the test. An applicant who achieved scores of 35 on each of the five tests prior to January 1, 1959, or who achieved 40 or above on each test or a 45 average on all five tests prior to January 1, 1997, may be issued a certificate.

(b) (No change.)

§89.47. Issuance of the Certificate.

(a) (No change.)

(b) Following review for eligibility and approval, certificates will be issued directly to clients. A nonrefundable fee of $10 will be assessed for issuance of a certificate and a copy of test scores. [~~Fees for issuance of certificates shall be waived for residents and inmates of city, county, state, and federal health and correctional facilities.~~] A permanent file shall be maintained for all certificates issued.

(c)-(g) (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 16, 1998.

TRD-9817544
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part XVII. Texas State Board of Plumbing Examiners

Chapter 361. Administration

Subchapter A. General Provisions

22 TAC §361.6

The Texas State Board of Plumbing Examiners proposes an amendment to §361.6, concerning general provisions.

This section specifies the fees that are reasonable and necessary to defray the cost of administering the Plumbing License Law. The proposed rule amendment would change the fee for a Master Plumber License from $150 to $175 and renewal of a Master Plumber License from $150 annually to $175 annually. Additionally, the proposal would change the fee for a Journeyman Plumber License from $12 to $25 and renewal of a Journeyman Plumber License from $12 annually to $25 annually. The proposed fee increases would apply to all unpaid Master and Journeyman License and Master and Journeyman License renewal fees, including any of those fees unpaid prior to the effective date of this proposed rule amendment. The need for the fee change is to satisfy H.B. 1, 75th Legislature, Art. VIII-60, Rider 3, that requires that the Board's fees, fines, and other miscellaneous revenue generate, at a minimum, the cost of the appropriations including employee matching cost and any other direct operating costs. The estimated increase in revenue that would be generated based on the amendment to the Board's fee structure will satisfy the Legislature's intent.

Jim Fowler, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five year period the section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The estimated increase in revenue for the current fiscal year will be approximately $207,729 which would satisfy the requirements of H.B. 1, 75th Legislature, Art. VIII-60, Rider 3. The estimated increase in revenue for each year thereafter would be approximately $360,508. The anticipated economic cost to local governments who are required to comply with the amendment will be contingent upon the number of inspectors who have a Master or Journeyman Plumber License that will be paid by the local government. Similarly, the cost to small businesses and individuals who are required to comply with the amendment will be contingent on the number of plumbers employed by the small businesses and for the individuals who pay for their own License. The Board will incur a cost of approximately $100 for computer programming changes to allow for the fee changes.

Mr. Fowler also has 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 rule will be enhanced public health, safety, and welfare because the Board will have sufficient income to administer and enforce the Plumbing License Law.

Comments on the proposed rule change may be submitted to Gilbert Kissling, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendment is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101(Plumbing License Law), §5(a), §13(a), (Vernon Supp. 1998), the rule it amends and H.B. 1, 75th Legislature, Art. VIII-60, Rider 3. Sec.

5(a) of the Plumbing License Law authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Plumbing License Law. Sec. 13(a) of the Plumbing License Law directs the Board to establish fees that are reasonable and necessary to defray the cost of administering the Plumbing License Law.

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

§361.6. Fees.

(a) The Board has established the following fees:

(1) Licenses:

(A) Master License – $175 [~~$150~~];

(B) Journeyman License – $25 [~~$12~~];

(C)-(I) (No change.)

(2) (No change.)

(3) Renewals:

(A) Master License – $175 [~~$150~~];

(B) Journeyman License – $25 [~~$12~~];

(C)-(K) (No change.)

(4) (No change.)

(b)-(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 16, 1998.

TRD-9817577
Robert L. Maxwell
Chief of Field Services/Investigations
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 458–2145

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Chapter 365. Licensing

22 TAC §365.1, §365.14

The Texas State Board of Plumbing Examiners proposes amendments to §365.1 and §365.14, concerning licensing.

Section 365.1 describes the categories of licenses and endorsements administered by the Board and the type of work permitted to be performed by the holders of those licenses and/or endorsements. The proposed amendment to §365.1 does not change current requirements set out by the Board Rules, but clarifies that a holder of a Water Supply Protection Specialist Endorsement may perform Customer Service Inspections as defined by the Texas Natural Resource Conservation Commission's Rules and Regulations for Public Water Systems, but not the plumbing inspections required under Section 15(a) of the Plumbing License Law (Act), if that individual does not also hold a valid Plumbing Inspector License as required by Section 14(a) of the Act.

Section 365.14 states procedures and requirements for annual selection of one continuing education course, textbook, course outline and approval of instructors, as well as instructor license requirements and qualifications. The proposed amendment to §365.14 would allow the Board to approve more than one annual continuing education course, along with required course materials and course outlines. Providers of continuing education courses will submit their own course materials and course outlines for approval by the Board. In addition, the proposed amendment to §365.14 eliminates unnecessary statement of the effective time for rule and clarifies the reference to the Texas Education Code section currently contained in the rule. The amendment to §365.14 will enable the Board to fully explore and make available, when appropriate, continuing education programs developed in the market place of ideas which will assist our licensees in maintaining and developing the variety of skills which are necessary for the protection of the health and safety of the citizens of the State of Texas.

James Fowler, CPA, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period that §365.1 is in effect there will be no effect on local government as a result of enforcing the rule. However, Mr. Fowler has determined that in regards to §365.14 there may be fiscal implications for state government as a result of enforcing or administering the rule. Currently each of the education providers teaches the same course from the Board approved book. Attendance records are transmitted electronically to the State Board of Plumbing Examiners where the individual plumber's record is updated automatically.

This rule change could impact the number of providers and the types of courses provided. This would require computer programming changes at the Texas State Board of Plumbing Examiners to allow for additional providers. These changes are estimated to cost approximately $1,000 and are based on the assumption that each course would meet the mandatory annual continuing education requirement of six hours in its' entirety. All continuing education providers would be required to export attendance files electronically to the Board using Board provided software. The software and training would be provided to each provider at a cost of $250.

The effect on local government is not possible to determine as the rule change will have an indeterminate effect on the number of continuing education providers and the types and cost of courses offered. Inspectors hired by local government are required to take continuing education and the rule change may effect the cost of these courses. The fiscal impact to individuals and small businesses can not be determined because it is unknown whether continuing education course costs will increase or decrease.

Mr. Fowler has determined that each year of the first five years that §365.1 is in effect the public benefit will be that the citizen's health and safety will be protected by insuring that Customer Service Inspections and plumbing inspections will be performed by the properly qualified individuals. There is no economic cost to the persons having to comply with the rule as proposed.

Mr. Fowler also has determined that each year of the first five years §365.14 is in effect the public benefit would be to plumbers who may have a broader selection of courses from which to take their required six hours of continuing education annually. However, the number of course providers and courses offered can not be determined at this time.

Comments on the proposed rule changes may be submitted to Gilbert Kissling, Administrator, Texas State Board of Plumbing

Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas, 78765-4200.

The amendment to §365.1 is proposed under and effects Texas Revised Civil Statutes Annotated Article 6243-101("Act"), §2(5), §5(a), §8, §11(A), §14(a), §15(a), (Vernon Supp. 1998) and the rule it amends. Section 2(5) of the Act defines "Plumbing Inspector". Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 8 of the Act directs the Board to administer a uniform and reasonable examination to determine the fitness, competency and qualifications of persons to engage in the business, trade or calling of a master or journeyman plumber or plumbing inspector. Section 11(A) of the Act requires the Board to promulgate rules to approve a Water Supply Protection Specialist (WSPS) Endorsement certification program, a WSPS Endorsement examination and issue WSPS Endorsements to qualified individuals. Section 14(a) prohibits an individual from serving as a plumbing inspector without a valid Plumbing Inspector License. Section 15(a) requires cities with more than 5,000 inhabitants to perform inspections of all plumbing. The proposed amendment to §365.1 does not conflict with the Texas Natural Resource Conservation Commission's Rules and Regulations for Public Water Systems.

The amendment to §365.14 is proposed under and affects Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §5(a), §5(d), §12B(a), §12B(b), §12(C) and the rule it amends. Sec. 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 5(d) specifies that the Board may recognize, prepare, or implement continuing education programs for licensees. Section 12B(a) requires a plumbing license holder to complete at least six hours of continuing professional education each license year. Section 12B(b) directs that the Board, by rule, adopt criteria for continuing professional education. Section 12B(c) specifies that in order for persons to receive credit for participation in a continuing professional education program or course, the program or course must have been provided according to criteria adopted by the Board by an individual, business, or association approved by the Board.

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

§365.1. License Categories; Description; Scope of Work Permitted.

The Board shall establish three separate license categories and two endorsement categories, as described in paragraphs (1)-(5) of this section [~~described as follows~~]:

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

(5) Water supply protection specialist – An endorsement in addition to a journeyman or master plumber license certifying the individual has been deemed by the Board to be competent in the inspection of the plumbing work or installation of a public water system distribution facility or of customer-owned plumbing connected to that system's water distribution lines. The holder of a Water Supply Protection Specialist Endorsement may perform Customer Service Inspections as defined in the Texas Natural Resource Conservation Commission's Rules and Regulations for Public Water Systems. Within the limits of a municipality of 5,000 or more inhabitants, a Water Supply Protection Specialist Endorsement shall not be used in lieu of a Plumbing Inspector License as required under Section 14(a) of the Act to perform plumbing inspections required under Section 15(a) of the Act.

§365.14. Continuing Education Programs.

(a) Any provider wishing to offer continuing education in plumbing must make application at least 60 days prior to the March Board meeting each year. [~~The 60-day deadline will become effective September 1, 1995~~]. The Board shall approve the providers annually. All providers will submit course materials and outlines which are to be used by the provider along with [~~to the Board~~] a list of instructors and instructors' credentials for Board approval. The Board will approve courses [~~a course~~] and course materials [~~textbook~~] each year as well as [~~a~~] course outlines [~~outline~~] and establish the required minimum hours. The providers shall meet the certification requirements of the Texas [~~Central~~] Education Agency or be exempted from the Texas [~~Central~~] Education Agency certification requirements under Texas Education Code, Chapter 132, §132.002(a), (Texas Proprietary School Act) or be approved by the United States Department of Labor-Bureau of Apprenticeship Training Schools and/or Programs. No other exemptions will be permitted under Section 132.002(a) (7) of the Education Code.

(b)-(g) (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 16, 1998.

TRD-9817578
Robert L. Maxwell
Chief of Field Services/Investigations
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 458–2145

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TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

Subchapter B. Early Childhood Intervention Service Delivery

The Interagency Council on Early Childhood Intervention (ECI) proposes amendments to §§621.22-621.24, 621.33 and the repeal of §621.32, concerning Early Childhood Intervention Service Delivery. The amendments and repeal are necessary as a result of the rule review process. The amendments will update the rules. Elsewhere in this issue of the *Texas Register*, the ECI has proposed for review the following sections: 621.21-621.33. This review is in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

Donna Samuelson, Deputy Executive Director, Interagency Council on Early Childhood Intervention, has determined that for the first five-year period the amendments and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and repeal.

Ms. Samuelson also has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the rules

will be current and concise rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments and repeal as proposed.

Comments on the proposal may be submitted to Alex Porter, General Counsel, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

25 TAC §§621.22–621.24, 621.33

The amendments are proposed under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with the Code.

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

§621.22. Definitions.

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

(1) Assessment–The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(A) the child's unique needs and strengths;

(B) the resources, priorities, and concerns of the family and identification of supports and services necessary to enhance developmental needs of the children; and

(C) the nature and extent of intervention services needed by the child and the family in order to resolve the determinations of this paragraph.

(2) Child find–Activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(3) Children–Infants and toddlers with disabilities.

(4) Committee–Advisory Committee to the Interagency Council on Early Childhood Intervention [~~Services~~]. Its functions are those of the Interagency Coordinating Council described in the Individuals with Disabilities Education Act [~~Amendments of 1991~~], Public Law 105-17 [~~102-119~~].

(5) Complaint–A formal written allegation submitted to the council stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(6) Comprehensive services–Individualized intervention services, as determined by the interdisciplinary team and listed in the Individualized Family Service Plan (IFSP). Services are further defined in §621.23(5)(C)-(E) of this title (relating to Service Delivery Requirements for Comprehensive Services). Programs receiving funds from the Interagency Council on Early Childhood Intervention [~~Services~~] are required to have the capacity to provide or arrange for all services listed in §621.23(5)(C) of this title (relating to Service Delivery Requirements for Comprehensive Services).

(7) Council–The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act. The council has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The council has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules. The council board includes eight lay members who are family members of children with developmental delay, appointed by the governor with the advice and consent of the senate, and one member from the Texas Education Agency appointed by the commissioner of education. Five of the lay members must be the parents of children who are receiving or have received early childhood intervention services. The board shall also have fully participating, non voting representatives appointed by the commissioner or executive head of the following agencies: Texas Department of Health (TDH), Texas Department of Human Services (TDHS), Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Commission on Alcohol and Drug Abuse (TCADA), Texas Department of Protective and Regulatory Services (TDPRS), and the Texas Workforce Commission (TWC) [~~a representative appointed by the commissioner of each of the following agencies: the Texas Department of Health, the Texas Department of Human Services, Texas Mental Health and Mental Retardation, the Texas Education Agency, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Protective and Regulatory Services, and three parents of children with developmental delay appointed by the governor of the State of Texas~~].

(8) Days–Calendar days.

(9) Developmental delay–A significant variation in normal development in one or more of the following areas as measured and determined by appropriate diagnostic instruments or procedures administered by an interdisciplinary team and by informed clinical opinion: cognitive development; physical development, including vision and hearing, gross and fine motor skills, and nutrition status; communication development; social and emotional development; and adaptive development.

(10) Early Childhood Intervention Program (ECI)–The total effort in Texas directed toward meeting the needs of children eligible under this chapter and their families.

(11) Evaluation–The procedures used by appropriate qualified personnel to determine the child's initial and continuing eligibility, consistent with the definition of infants and toddlers with developmental delay, including determining the status of the child in areas of cognitive development, physical development, communication development, social-emotional development, and adaptive development or self-help skills.

(12) Family Educational Rights and Privacy Act of 1974 (FERPA)–Requirements for the protection of parents and children under the General Education Provisions Act, §438, which include confidentiality, disclosure of personally identifiable information, and the right to inspect records.

(13) Full year services–The availability of an array of comprehensive services throughout the calendar year.

(14) Include(ing)–The items named are not all of the possible items that are covered whether like or unlike the ones named.

(15) Individual professional development plan (IPDP)–A written plan for inservice or continuing education to be prepared annually for each staff person in a program.

(16) Individualized family service plan (IFSP)–A written plan, developed by the interdisciplinary team, based on all assessment and evaluation information, including the family's description of their strengths and needs, which outlines the early intervention services for the child and the child's family.

(17) Intake–The first face-to-face contact with a parent following initial referral.

(18) Interdisciplinary team–The child's parent(s) and a minimum of two professionals from different disciplines who meet to share evaluation information, determine eligibility, assess needs, and develop the IFSP. The team must include the service coordinator who has been working with the family since the initial referral or the person responsible for implementing the IFSP and a person directly involved in conducting the evaluations and assessments.

(19) Parent–A parent, a guardian, a person acting as a parent of a child or an appointed surrogate parent.

(20) Personally identifiable information–Information which includes:

(A) the name of the child;

(B) the name of the child's parent, or other family member;

(C) the address of the child, parent, or other family member;

(D) a personal identifier, such as the child's or parent's social security number; or

(E) a list of personal characteristics or other information that would make it possible to identify or trace the child, the parent, or other family member, with reasonable certainty.

(21) Primary referral sources–Individuals or organizations which refer children including, but not limited to:

(A) hospitals, including prenatal and postnatal care facilities;

(B) physicians;

(C) parents;

(D) day care programs;

(E) local educational agencies;

(F) public health facilities;

(G) other social service agencies;

(H) other health care providers; and

(I) congregate care facilities.

(22) Program–A division of a local agency with the express and sole purpose of implementing comprehensive early childhood intervention services to children with developmental delays and their families.

(23) Provider–A local private or public agency with proper legal status and governed by a board of directors that accepts funds from the Interagency Council on Early Childhood Intervention [~~Services~~] to administer the Early Childhood Intervention (ECI) Program.

(24) Public agency–The Interagency Council on Early Childhood Intervention [~~Services~~] and any other political subdivision of the state that is responsible for providing early intervention services to eligible children under the Individuals with Disabilities Education Act, Part C [~~H~~].

(25) Public health clinic–Any clinic that provides pediatric physical examinations and receives public funding from federal, state, city, or county governments.

(26) Qualified–A person who has met state approval or recognized certificate, license, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(27) Referral date–The date the child's name and sufficient information to contact the family was obtained by the agency receiving funds from the Interagency Council on Early Childhood Intervention [~~Services~~].

(28) Service coordinator (case manager)–A staff person assigned to a child or family who is the single contact point for families, and who is responsible for assisting and empowering families to receive the rights, procedural safeguards, and services authorized by these rules and ECI policy and procedures. The service coordinator is from the profession most immediately related to the child's or family's needs. (The term profession includes service coordination.)

(29) Services–Individualized intervention services, as determined by the interdisciplinary team and listed in the IFSP. Services are further defined in §621.23(5)(C)-(E) of this title (relating to Service Delivery Requirements).

(30) Supplanting–The withdrawal of local, private, or other public funds for services which were available during the previous year of funding.

(31) Surrogate parent–An individual appointed or assigned to take the place of a parent for the purposes of Chapter 73 of the Human Resources Code when no parent can be identified or located or when the child is under managing conservatorship of the state. A surrogate parent appointed under this chapter shall act to advocate for or represent the child, relating to the identification, evaluation, educational placement, and provision of the Individuals with Disabilities Education Act, Part C [~~H~~] services.

[~~TCADA– Texas Commission on Alcohol and Drug Abuse.~~]

[~~TDH– Texas Department of Health.~~]

[~~TDHS– Texas Department of Human Services.~~]

[~~TDPRS– Texas Department of Protective and Regulatory Services.~~]

[~~TEA– Texas Education Agency.~~]

[~~TXMHMR– Texas Mental Health and Mental Retardation.~~]

(32) Transportation services–Travel and other related costs that are necessary to enable a child or family to receive early intervention services.

(33) UGCMS–Uniform grant [~~and contract~~] management standards adopted by the governor's Office of Budget and Planning in 1 TAC §§5.141-5.167 under authority of Texas Civil Statutes, Article 4413(32g).

§621.23. Service Delivery Requirements for Comprehensive Services.

Programs that receive Early Childhood Intervention (ECI) funds for comprehensive services must have written policies and procedures which are implemented and evaluated in each of the following areas.

(1) Client eligibility. The comprehensive program must have written criteria for determining infants and toddlers with disabilities and accepting them into the program.

(A) A child is eligible for ECI comprehensive services if the child is under three years of age including Native American children residing on reservations geographically located in Texas

and those children authorized for services as visually or auditorially impaired children as defined by the Texas Education Code.

(B) A child is eligible for ECI comprehensive services if the child is documented as developmentally delayed or has a medically diagnosed [~~physical or mental~~] condition that has a high probability of resulting in developmental delay.

(C) (No change.)

(2) (No change.)

(3) Assessment and evaluation. The assessment and evaluation for comprehensive services must be in accordance with the following criteria and procedures.

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

(F) Identification of the family's concerns, priorities, and resources must be voluntary. If a family agrees, the identification must:

(i) be family directed and designed to determine the concerns, priorities, and resources of the family related to enhancing the child's development; and

(ii) be based on information provided by the family.

(4) Health admission requirement for comprehensive services.

(A) (No change.)

(B) If the child has received a physical examination in accordance with the periodicity schedule of the American Academy of Pediatrics, an additional examination is not required for admission. If the child has not received an examination as recommended in the American Academy of Pediatrics schedule, a physical exam must be conducted within 90 days prior to enrollment or prior to the implementation of direct services [~~within 30 days following enrollment~~].

(C) (No change.)

(5) Individualized family service plan (IFSP). An IFSP must be developed for each child eligible for comprehensive services and the child's family. Services must be delivered in conformity with an IFSP.

(A) (No change.)

(B) IFSP participants. An interdisciplinary team must meet to establish eligibility and develop the initial IFSP. The interdisciplinary team must include the following participants:

(i)-(iii) (No change.)

(iv) a minimum of two professionals from different disciplines. The team must include the service coordinator who has been working with the family since the initial referral or who has been [~~the person~~] responsible for implementing the IFSP and a professional [~~person~~] directly involved in conducting the evaluations and assessments; and

(v) (No change.)

(C) Required early intervention comprehensive services. Individualized intervention services, as determined by the interdisciplinary team, must be provided under public supervision in all geographic areas of the state to meet the developmental needs of the child, and to address the resources, priorities, and concerns of the family related to enhancing the child's development. All services identified as needed for the child by the interdisciplinary team must be addressed in the IFSP. With concurrence of the family, all services identified as needed by the family may be addressed in the IFSP. The array of services must include, but is not limited to, the following:

(i)-(xx) (No change.)

(D) Types of services. For the purpose of this chapter the following types of services apply.

(i) (No change.)

(ii) Service coordination includes activities carried out by a service coordinator to an eligible child and the child's family to assist and empower the family to receive the provisions, procedural safeguards, and services authorized to be provided by this chapter. Activities include but are not limited to:

(I)-(III) (No change.)

(IV) coordinating [~~coordination~~] and monitoring the delivery of available services;

(V)-(VII) (No change.)

(iii) Family education, counseling, and home visits include services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an eligible child in understanding the special needs of the child and enhancing the child's development.

(I) Family education is activities designed to improve the knowledge and skills of parents and other family members in matters related to growth, development, and learning of their child.

(II) Counseling is assistance provided to the parents by qualified personnel.

(III) Home visits are all services provided in the child's home.

(iv)-(xvi) (No change.)

(E)-(F) (No change.)

(G) Service coordination. Service Coordination services means assistance and services provided by a service coordinator to an eligible child and the child's family that are in addition to the functions and activities of this section and enable the child and the child's family to receive the rights, procedural safeguards, and services provided under this part.

(i)-(iii) (No change.)

(iv) The local program must ensure that all persons functioning as service coordinators are:

(I) (No change.)

(II) knowledgeable of Part C [~~H~~] of the Individuals with Disabilities Education Act; and

(III) knowledgeable about the nature and scope of services available under the Early Childhood Intervention Program on the state and local levels, including eligibility [~~and fee-for-service information~~].

(H) Contents of the plan. Programs which receive funds from the Interagency Council on Early Childhood Intervention [~~Services~~] must have a written IFSP for each child developed jointly by the interdisciplinary team including the child's parents.

(i)-(iii) (No change.)

(iv) The IFSP must address the specific early intervention comprehensive services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the plan, including:

(I) (No change.)

(II) a statement of the natural environments in which early intervention services shall be provided, including the justification of the extent, if any, to which the services will not be provided in a natural environment. [~~a summary of the age appropriate opportunities that the child will have to interact with peers who do not have disabilities in natural environments;~~]

(III) (No change.)

(v)-(vii) (No change.)

(I)-(L) (No change.)

§621.24. Program Administration for Comprehensive Services.

(a) (No change.)

(b) Program requirements.

(1) Child find. Each program must develop and implement a child find plan which includes:

(A) ongoing contact and coordination with primary referral sources and other service providers, including, but not limited to:

(i)-(x) (No change.)

~~*[(xi)* ECI Milestones programs;]~~

(xi) [~~(xii)~~] child care management services (CCMS);

(xii) [~~(xiii)~~] any program funded under Development Disabilities Assistance and Bill of Rights Act; and

(xiii) [~~(xiv)~~] programs under Supplemental Security Income under Title XVI of the Social Security Act;

(B) (No change.)

(C) accepting referrals for intervention services and evaluating each child for eligibility within 45 days of the referral. [~~In areas served by more than one provider, a system to ensure that evaluation and assessment services are not duplicated for one child must be established.~~]

(2) Required services. Each comprehensive program must provide an evaluation and assessment, service coordination, and Individualized Family Service Plan (IFSP) and comprehensive services. Each program funded by the Interagency Council on Early Childhood Intervention [~~Services~~] must have the capacity to provide or arrange for all services described in §621.23(5)(C) of this title (relating to Service Delivery Requirements for Comprehensive Services). All services which the child or family receives, regardless of the funding sources, must be considered toward meeting the service needs of the child as defined in the child's IFSP. No ECI funding can be used to arrange, provide, or duplicate a service for which other funding sources, public or private, are available and could be used.

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

(5) Staff composition and qualifications.

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

(C) For the occupational categories for which state authority has not established professional standards (such as service coordinator and early intervention specialist), programs must employ staff who are qualified in terms of education and experience for their assigned scopes of responsibilities and provide the required degree of supervision. [~~For the occupational category Early Intervention Specialist Professionals (EIS Professionals), the Interagency Council on Early Childhood Intervention Services will establish the standards for education and experience and the nature and amount of required supervision~~].

(D) As of September 1, 1995, the following qualifications and responsibilities for EIS Professionals are effective.

(i) Definitions of Early Intervention Specialist Professional levels. EIS Professional is an occupational title and occupational category specific to service providers employed by Early Childhood Intervention (ECI) programs. These service providers have demonstrated through their education and experience the knowledge and skills required in early intervention service delivery. There are two classes of EIS Professionals.

(I) Entry level–Persons with bachelor's degrees [~~in disciplines related to early intervention services or bachelor's degrees in unrelated fields~~] which include a minimum of 18 hours of college credit related to the provision of early intervention services are eligible to apply for Entry Level status. An Entry Level EIS Professional will have a maximum of two years from the [~~initial~~] date of hiring to complete the requirements to be approved as a Fully Qualified EIS Professional. Failure to complete the required process within two years will result in the loss of professional status and privileges. Exceptions to this provision may be approved by the state ECI office on an individual basis for extreme circumstances. Requests for exceptions must be in writing.

(II) (No change.)

(ii) Scope of responsibilities. Early Intervention Specialist Professionals (Entry Level and Fully Qualified EIS Professionals) may represent the discipline of early intervention and may be one of the two required professionals on an Interdisciplinary Team (IDT). EIS Professionals may conduct family intake processes, participate in determining eligibility, conduct developmental screenings and assessments, participate in the development and implementation of Individualized Family Service Plans, and provide service coordination, special instruction, and family education services.

(iii) (No change.)

~~*[(iv)* Professional recognition for EIS Professionals employed on September 1, 1995.]~~

~~*[(I)* Persons employed by ECI programs as Fully Qualified EIS Professionals on September 1, 1995, must:]~~

~~[(-a-) meet entry level requirements as defined in clause (i)(I) of this subparagraph;]~~

~~[(-b-) submit a written application for continued recognition as a Fully Qualified EIS Professional to the Texas Interagency Council on Early Childhood Intervention by September 1, 1996; and]~~

~~[(-c-) have been employed a minimum of one calendar year as an EIS Professional with a satisfactory performance evaluation(s) in an ECI-funded program.]~~

~~*[(II)* Persons employed by ECI programs as Provisional EIS Professionals on September 1, 1995, must either meet the qualifications as fully qualified EIS Professionals or apply in writing by September 1, 1995, to complete the required demonstrations of knowledge and skills in early intervention service provision by September 1, 1997.]~~

(iv) [~~(III)~~] EIS Professionals and Provisional EIS Professionals who were hired before September 1, 1995, and are currently employed in ECI-funded programs, who failed [~~fail~~] to complete the required application process [~~within the specified time frames will~~] are not [~~be~~] considered EIS Professionals. They will no longer be able to independently perform the scope of responsibilities of EIS Professionals as defined in clause (ii) of this subparagraph. To obtain status as Fully Qualified EIS Professionals, they must enter the system as Entry Level EIS Professionals and complete the conditions defined in clause (v) of this subparagraph.

(v) Professional recognition for EIS Professionals hired after September 1, 1995. Persons hired as EIS Professionals after September 1, 1995, who are not Fully Qualified EIS Professionals are identified as Entry Level EIS Professionals and to be recognized as Fully Qualified EIS Professionals must:

(I) meet the educational requirements of a bachelor's degree [~~in a discipline related to early intervention or a bachelor's degree~~] which includes a minimum of 18 hours of course credit relevant to early intervention service provision and submit a statement of intent to complete the required demonstrations of early intervention knowledge and skills and apply for full professional recognition;

(II) within nine months of their hiring date, submit a progress report [~~complete a self assessment~~] of the demonstration of early intervention knowledge and skills completed by [~~with~~] their ECI program director and [~~or~~] supervisor;

(III) within two years of their hiring date, complete the required demonstrations of early intervention knowledge and skills and submit documentation to the state office; [~~for recognition as a Fully Qualified EIS Professional;~~] and

(IV) complete the required processes or lose professional status and privileges. If the required processes are not completed as specified in subclauses (I)-(III) of this clause; they [~~They~~] will no longer be able to independently perform the scope of responsibilities of EIS Professionals as defined in clause (ii) of this subparagraph.

~~*I(vi)* Other ECI employees. ECI employees employed in positions other than EIS Professionals who, by the completion of educational requirements and approval of the ECI program director, are eligible to enter the system as Entry Level EIS Professionals may complete the conditions defined in clause (v) of this subparagraph and be recognized as Fully Qualified EIS Professionals.]~~

(vi) [~~(vii)~~] Continuing professional education requirements. EIS Professionals must meet annual continuing professional education requirements to maintain their status. Continuing professional education consists of the planned individual learning experiences as described in the EIS Professional's annual Individual Professional Development Plan (IPDP) which shall include completion of a minimum of ten contact hours of approved continuing professional development education experiences.

(vii) EIS Professionals must submit annually the record of their continuing education on or before the anniversary of the certificate date.

(viii)-(x) (No change.)

(E) The director of the local ECI program must provide and document the amounts of appropriate supervision [~~appropriate~~] for all ECI contract staff and program staff to ensure the philosophy and intent of these regulations are met as adopted by the Interagency Council on Early Childhood Intervention [~~Services~~].

(F) (No change.)

(6) Inservice education. Each program shall annually assess and address the training needs of the [~~each~~] early childhood intervention staff [~~member~~]. Documentation of the development and implementation of each staff members individualized professional development plan (IPDP) shall be maintained by the program.

(7) (No change.)

(8) Child health standards. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in each of the following areas.

(A) (No change.)

(B) Infectious disease prevention and management.

(i)-(ii) (No change.)

(iii) In the event of an outbreak of a contagious disease, infants attending center-based activities [~~programs~~] must be excluded if they have not been immunized due to medical or religious contraindications.

(C) (No change.)

(9)-(11) (No change.)

(12) Reporting child abuse. The program must report suspected child abuse or neglect as required by the Texas Family Code, Chapter 261 [~~34~~].

(13)-(14) (No change.)

§621.33. Waiver of Program Standards for All Providers Funded by the Interagency Council on Early Childhood Intervention [~~Services~~].

(a) When under an unusual circumstance, a provider funded by the Interagency Council on Early Childhood Intervention [~~Services~~] wishes to request approval of a waiver from adherence to an Early Childhood Intervention (ECI) policy, the provider must submit to the assigned program or fiscal consultant [~~monitor~~] a written request which includes the following:

(1)-(3) (No change)

(4) the projected fiscal and/or program implications; and

(5) (No change.)

(b) The appropriate consultants [~~monitor~~] will review the request and forward a recommendation within 10 working days to the ECI executive director for assignment to the waiver review committee.

(c) (No change.)

(d) The waiver review committee will consist of the ECI program executive director, the ECI board [~~council~~] chairperson, the director of the Provider Relations Division of the ECI Program, and any other person appointed by the executive director. The recommendation of the waiver committee will be presented at the next scheduled board [~~council~~] meeting for full board [~~council~~] review. All decisions will be made by majority vote.

(e)-(g) (No change.)

(h) Waivers shall not be approved if the waiver request would result in noncompliance with federal or state regulations, [~~or~~] jeopardizes any procedural safeguard or rights of confidentiality, or threatens the health and safety of a child.

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 16, 1998.

TRD-9817585
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 424–6750

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25 TAC §621.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Interagency Council on Early Childhood Intervention or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with the Code.

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

§621.32. Application by Providers for Lapsed Funds.

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 16, 1998.

TRD-9817586
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 424–6750

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Subchapter D. Early Childhood Intervention Advisory Committee

25 TAC §621.64

The Interagency Council on Early Childhood Intervention (ECI) proposes an amendment to §621.64, concerning Advisory Committee Procedures. The amendment is necessary in subsection (e). There is a reference to Article V, when in fact the proper reference is Article IX. Elsewhere in this issue of the *Texas Register*, the ECI has adopted the review of the following sections: 621.1-621.3, 621.5 and 621.61-621.64. This review is in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

Donna Samuelson, Deputy Executive Director, Interagency Council on Early Childhood Intervention, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Samuelson 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 enforcing the rule will be correct and current references. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Alex Porter, General Counsel, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas, 78751-2399.

The amendment is proposed under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with the Code.

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

§621.64. Advisory Committee Procedures.

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

(e) Compensatory per diem. Official and ex officio members who attend meetings may be reimbursed for expenses for meals, lodging, and transportation as established in the current Texas State Appropriations Act, Article IX [~~V~~]. The official and ex officio members who are parents are entitled to reimbursement for child care. All official and ex officio members are entitled to reimbursement for attendant care.

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

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

Filed with the Office of the Secretary of State, on November 16, 1998.

TRD-9817589
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 424-6750

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.415

The Texas Department of Insurance proposes an amendment to §1.415, concerning assessment of a maintenance tax surcharge which will be used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund. A previous proposal to amend the section was published in the November 13, 1998, issue of the Texas Register. The department has withdrawn that proposal. The previous proposal did not include a principal and interest payment in the calculation of the proposed rate. The rate has been recalculated to include the omitted principal and interest payment. The amendment is proposed to change the rate of assessment for taxes due in 1999 on the basis of gross premium receipts for calendar year 1998. The Texas Workers' Compensation Commission annually establishes and certifies to the comptroller of public accounts the rate of assessment for the maintenance taxes which are authorized

to pay the cost of administering the Texas Workers' Compensation Act. The commissioner of insurance may increase the Texas Workers' Compensation Commission tax rate to a rate sufficient to pay all debt service on the bonds issued on behalf of the Texas Workers' Compensation Insurance Fund, subject to the maximum rate established by the Texas Labor Code, §404.003. The proposed section amends the rate of assessment which applies to workers' compensation insurance companies. Timely and accurate payment of maintenance taxes is necessary for support of regulatory functions.

Karen A. Phillips, Chief Financial Officer for the department, has determined that for the first five-year period the proposed section is in effect, the anticipated fiscal impact on state government is estimated income of $10,708,389 generated from the maintenance tax surcharge which will be used to pay debt service for $300 million in bonds issued in 1991 by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Ms. Phillips also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. The amount of the surcharge is determined each year by the department. The cost in 1999 will be .350% of an insurer's correctly reported gross workers' compensation insurance premiums for the calendar year 1998. There will be no difference in rates of assessment between small and large businesses. The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Karen A. Phillips, Chief Financial Officer, Mail Code #108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 5.76-3, 5.76-5, 5.68 and 1.03A and the Texas Labor Code, §403.002. The Insurance Code, Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.76-5 establishes the maintenance tax surcharge. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the Department as authorized by statute. The Texas Labor Code, §403.002 establishes the maintenance tax for workers' compensation insurance companies.

The following Texas statutes are affected by this rule: Insurance Code, Articles 5.12, 5.55C, 5.68, 5.76-3, 5.76-5, 21.46, and 21.54 and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09.

§1.415. Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1999 [~~1998~~].

(a) The maintenance tax surcharge is levied against each insurance carrier writing workers' compensation insurance in this state, at the rate of .350% [~~0.0%~~] of the correctly reported gross workers' compensation insurance premiums for the calendar year 1998 [~~1997~~] to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) The maintenance tax surcharge shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100 on March 1, 1999 [~~1998~~].

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 16, 1998.

TRD-9817602
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §§335.1, 335.17, 335.24, 335.29

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.1, 335.17, 335.24, 335.29, 335.221, and 335.431, concerning industrial solid waste and municipal hazardous waste.

EXPLANATION OF PROPOSED RULES. The primary purpose of the proposed amendments is to revise the state rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the state rules which corresponds to the federal regulations. Under Title 40 Code of Federal Regulations (CFR) §271.21(e), states having final Resource Conservation and Recovery Act (RCRA) authorization, such as the State of Texas, must modify their programs to reflect federal program changes and submit the modifications to the United States Environmental Protection Agency (EPA) for approval. Establishing equivalency with federal regulations will enable the commission to retain authorization to operate aspects of the hazardous waste program in lieu of EPA. The federal regulations to which these proposed rules are being conformed include those promulgated by the

EPA on June 17, 1997 at 62 FedReg 32974, July 14, 1997 at 62 FedReg 37694, August 28,1997 at 62 FedReg 45568, May 4, 1998 at 63 FedReg 24596, May 26, 1998 at 63 FedReg 28556, June 8, 1998 at 63 FedReg 31266, June 29, 1998 at 63 FedReg 35147, August 6, 1998 at 63 FedReg 42110, August 10, 1998 at 63 FedReg 42580, and August 31, 1998 at 63 FedReg 46332 under the authority of RCRA.

The June 17, 1997 federal promulgation included revisions to 40 CFR Part 261 relating to the identification and listing of certain carbamate industry production wastes, and revisions to the land disposal restrictions under 40 CFR Part 268 concerning these wastes, to conform with the federal appeals court ruling in *Dithiocarbamate Task Force v. EPA,* 98 F.3d 1394 (D.C.Cir. 1996). The July 14, 1997 federal promulgation provided an emergency extension of the K088 national capacity variance. The August 28, 1997 promulgation was an emergency revision of the carbamate land disposal restrictions. The May 4, 1998 federal promulgation included revisions to 40 CFR Part 261 relating to the identification and listing of certain organobromine production wastes, and revisions to the land disposal restrictions under 40 CFR Part 268 concerning these wastes. The May 26, 1998 federal promulgation set forth Phase IV land disposal restrictions for metal-bearing wastes, including toxicity characteristic metal wastes, land disposal restrictions for hazardous wastes from mineral processing, identification of which mineral processing secondary materials are considered to be wastes, treatment standards for soil contaminated with hazardous waste, a clarification concerning the shredded circuit board and scrap metal exemptions with regard to certain whole used circuit boards, and an exclusion from the definition of solid waste for certain materials reused in wood preserving operations. The June 8, 1998 federal promulgation included a correction to the May 26, 1998 promulgation. The June 29, 1998 federal promulgation included technical amendments to the land disposal restrictions relating to organobromine production hazardous wastes. The August 6, 1998 federal promulgation included revisions to 40 CFR Parts 261, 266, and 268 related to petroleum refining process wastes. The August 10, 1998 federal promulgation included corrections and technical amendments to the previous promulgations of May 4, May 26, and June 29, 1998. The August 31, 1998 federal promulgation included a stay of the Phase IV rule as it applied to treatment standards for hazardous constituent metals in certain zinc-containing fertilizers.

Section 335.1 is proposed to be amended at the definition of solid waste. Under proposed §335.1(119)(A)(iv), certain revised and new federal solid waste exclusions would be incorporated. The revised exclusions are under 40 CFR §261.4(a)(9) and §261.4(a)(12), and the new exclusions are under 40 CFR §§261.4(a)(16), 261.4(a)(18), and 261.4(a)(19). Also, there is a clarification of the exclusions for shredded circuit boards and scrap metal relating to whole circuit boards that is proposed to be incorporated, although no changes to the actual rule language are necessary. The revision to 40 CFR §261.4(a)(9) was promulgated May 26, 1998 at 63 FedReg 28556, and includes a conditional exclusion for certain wood preserving wastewaters and spent wood preserving solutions being managed prior to reuse. The revision to 40 CFR §261.4(a)(12) was promulgated August 6, 1998 at 63 FedReg 42110. It includes an exclusion from the definition of solid waste for oil-bearing hazardous secondary materials generated within the petroleum refining sector, and for "recovered oil" from normal petroleum industry practices such as refining, exploration and development, bulk storage, and related transportation, when they are to be inserted into the petroleum refining process, including into the petroleum coker, provided they are not placed on the land or speculatively accumulated before being recycled. The clarification of the exclusions for shredded circuit boards and scrap metal relating to whole circuit boards is proposed to be incorporated in accordance with the following language from 63 FedReg 28629-28630. "In the May 12, 1997 final rule on Land Disposal Restrictions, the EPA excluded shredded circuit boards from the definition of solid waste conditioned on containerized storage prior to recovery. To be covered by this exclusion shredded circuit boards must be free of mercury switches, mercury relays, nickel-cadmium batteries or lithium batteries. On a related issue, current Agency policy states that whole circuit boards may meet the definition of scrap metal and therefore be exempt from hazardous waste regulation. In a parenthetical statement in the May 12, 1997 rule, the Agency asserted that whole used circuit boards which contain mercury switches, mercury relays, nickel-cadmium batteries, or lithium batteries also do not meet the definition of scrap metal because mercury (being a liquid metal) and batteries are not within the scope of the definition of scrap metal. The preamble cited 50 FR 614, 624 (1985). Members of the electronics industry expressed concern to the Agency about the preamble statement regarding the regulatory status of whole used circuit boards which contain mercury switches, mercury relays, nickel-cadmium batteries, or lithium batteries. The electronics industry indicated that its member(s) have developed a sophisticated asset/materials recovery system to collect and transport whole used circuit boards to processing facilities. The industry explained that the boards are sent to processing facilities for evaluation (continued use, reuse or reclamation) where the switches and the types of batteries are generally removed by persons with the appropriate knowledge and tools for removing these materials. Once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they fail a hazardous waste characteristic, they are handled as hazardous waste, otherwise they are managed as a solid waste. Information was also provided regarding the quantity of mercury on these switches and on the physical state in which they are found on the boards. The information indicates that the mercury switches and relays on circuit boards from some typical applications contain between 0.02-0.08 grams of mercury and are encased in metal which is then coated in epoxy prior to attachment to the boards. In today's final rule, the Agency recognizes that the preamble statement in the May 12, 1997 final rule is overly broad in that it suggested that the scrap metal exemption would not apply to whole used circuit boards containing the kind of minor battery or mercury switch components and that are being sent for continued use, reuse, or recovery. It is not the Agency's current intent to regulate under RCRA circuit boards containing minimal quantities of mercury and batteries that are protectively packaged to minimize dispersion of metal constituents. Once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they meet the criteria to be classified as a hazardous waste, they must be handled as hazardous waste, otherwise they must be managed as a solid waste." The new exclusion from the definition of solid waste under 40 CFR §261.4(a)(16) was promulgated May 26, 1998 at 63 FedReg 28556, and includes a conditional exclusion for secondary materials (other than hazardous wastes listed in 40 CFR Part 261, Subpart D) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered. The new exclusions from

the definition of solid waste under 40 CFR §261.4(a)(18) and §261.4(a)(19) were promulgated August 6, 1998, at 63 FedReg 42110. These include conditional exclusions for petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, and for caustic from liquid treating operations when used as a feedstock to make certain chemical products (i.e., cresylic or naphthenic acid). Elsewhere within the definition of "solid waste," the term "Code of Federal Regulations" is proposed to be replaced with "CFR." See §§335.1(119)(D)(i)(II), 335.1(119)(D)(ii)(II), 335.1(119)(E), 335.1(119)(G)(iv), and 335.1(119)(I). The definition of "solid waste" is also proposed to be amended to conform to the federal regulations promulgated May 26, 1998 at 63 FedReg 28556, concerning materials generated and reclaimed within the primary mineral processing industry. Proposed §335.1(119)(D)(iii) reflects 40 CFR §261.2(c)(3), and sets forth that materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)), while materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)). This amendment is proposed to account for the conditional exclusion for secondary materials (other than hazardous wastes listed in 40 CFR Part 261, Subpart D) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered. Proposed §335.1(119)(F)(iii) reflects 40 CFR §261.2(e)(1)(iii), and adds a sentence to indicate that there are special provisions relating to reclamation within the mineral processing industry, as follows: "In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(16) apply rather than this provision." Another proposed amendment to the definition of "solid waste" under §335.1(119) to conform the state definition with changes to its federal counterpart is within Table 1, adding a footnote to match the language regarding reclamation in Table 1 of the corresponding federal regulation under 40 CFR §261.2 which states "Except as provided in 40 CFR §261.4(a)(16) for mineral processing secondary materials."

Section 335.17 is proposed to be amended to correct the cross-reference to 40 CFR §261.4(a)(13) under §335.17(a)(10). The correct cross-reference is 40 CFR §261.4(a)(14). See 63 FedReg 28622.

Proposed §335.24 contains a conforming change to reflect the federal regulations promulgated August 6, 1998 at 63 FedReg 42110, under which §261.6(a)(3)(v) was removed. The corresponding state rule change is the proposed deletion of §335.24(c)(5) regarding the exemption for petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C. The reason for the removal of this exemption is because it was superseded by the revised exclusion from the definition of solid waste at 40 CFR §261.4(a)(12). According to EPA in the August 6, 1998 promulgation at 63 FedReg 42127, "(t)he Agency is maintaining the condition that only those oil-bearing secondary materials that result in a coke product that does not exhibit a characteristic of hazardous waste be subject to the exclusion. This condition mirrors the statutory provision stating that petroleum coke produced from petroleum industry hazardous wastes is not subject to Subtitle C regulation provided the coke does not exhibit a characteristic of hazardous waste (see RCRA section 3004(q)(2)(A)). This condition (coupled with the industry's own product specifications) will serve to ensure that the coke product does not degrade such that the secondary materials used in producing the coke will become a part of the waste disposal problem. As a result of this condition and the fact that this exclusion is limited to refinery wastes, today's exclusion in §261.4(a)(12) supersedes the existing exemption in §261.6(a)(3)(v); therefore, the regulations are being amended to remove §261.6(a)(3)(v)."

Proposed §335.29 contains updates to the adoption of appendices by reference. Under §335.29(4), it is proposed to adopt by reference 40 CFR Part 261, Appendix VII - Basis for Listing Hazardous Waste, as amended through August 6, 1998 at 63 FedReg 42110. This proposed revision to §335.29(4) would incorporate changes to the federal regulations, including those promulgated on June 17, 1997 at 62 FedReg 32974, May 4, 1998 at 63 FedReg 24596, and August 6, 1998 at 63 FedReg 42110. The June 17, 1997 promulgation amended Appendix VII by removing the entire entry for EPA hazardous waste number K160. The May 4, 1998 promulgation added 2,4,6- tribromophenol as the hazardous constituent for which EPA hazardous waste number K140 (floor sweepings, off-specification product and spent filter media from the production of 2,4,6- tribromophenol) was listed. The August 6, 1998 promulgation added benzene as the hazardous constituent for which EPA hazardous waste number K169 (crude oil storage tank sediment from petroleum refining operations) was listed; benzo(a)pyrene, dibenz(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, and 7,12- dimethylbenz(a)anthracene as the hazardous constituents for which EPA hazardous waste number K170 (clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations) was listed; benzene and arsenic as the hazardous constituents for which EPA hazardous waste number K171 (spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, excluding inert support media) was listed; and benzene and arsenic as the hazardous constituents for which EPA hazardous waste number K172 (spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, excluding inert support media) was listed. Under §335.29(5), it is proposed to adopt by reference 40 CFR Part 261, Appendix VIII - Hazardous Constituents, as amended through May 4, 1998 at 63 FedReg 24596, which added 2,4,6-tribromophenol to the list of hazardous constituents. This also includes amendments to 40 CFR, Appendix VIII promulgated June 17, 1997 which removed the entries for potassium hyroxymethyl-n-methyl-dithiocarbamate and tetrabutylthiuram monosulfide, and revised and added the following entries: bis(pentamethylene)-thiuram tetrasulfide; butylate; copper dimethyldithiocarbamate; cycloate; dazomet; disulfiram; EPTC; ethyl ziram; ferbam; 3-iodo-2-propynyl n-butylcarbamate; metam sodium; molinate; pebulate; potassium dimethyldithiocarbamate; potassium n-hydroxymethyl-n-methyl-dithiocarbamate; potassium n-methyldithiocarbamate; selenium, tetrakis(dimethyldithiocarbamate); sodium dibutyldithiocarbamate; sodium diethyldithiocarbamate; sodium dimethyldithiocarbamate; sulfallate, tetrabutylthiuram disulfide; tetramethylthiuram monosulfide; and vernolate.

Proposed §335.221(b)(2) is a conforming change to revisions in the federal regulations under §266.100(b)(3), as promulgated August 6, 1998 at 63 FedReg 42110. This change reflects the deletion of §335.24(c)(5) as proposed today. Section 335.221 concerns applicability and standards relating to hazardous waste burned for energy recovery. Under §335.221(b), hazardous wastes and facilities which are not regulated under the rules relating to hazardous waste burned for energy recovery (i.e., §§335.221 - 335.229) are described, including certain hazardous wastes otherwise exempt from regulation. Under proposed §335.221(b)(2), the following hazardous wastes are not regulated under §§335.221 - 335.229: hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)(3) - (4). The proposed rule deletes the reference to §335.24(c)(5) because §335.24(c)(5) is proposed for deletion. As described earlier in this preamble, proposed §335.24 contains a conforming change to reflect the federal regulations promulgated August 6, 1998 at 63 FedReg 42110, under which §261.6(a)(3)(v) was removed. The corresponding state rule change is the proposed deletion of §335.24(c)(5) regarding the exemption for petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C. Therefore, since §335.24(c)(5) would no longer exist under this proposal, it is necessary to delete the reference to §335.24(c)(5) under proposed §335.221(b)(2).

Proposed §335.431(c)(1) is proposed to be amended to adopt by reference additional federal land disposal restriction (LDR) regulations. Under this proposal, subject to the provisions of §335.431(c)(1), the regulations contained in 40 CFR Part 268, as amended through August 31, 1998 at 63 FedReg 46332 would be adopted by reference. This proposal would incorporate changes made to 40 CFR Part 268, including those promulgated by the EPA on June 17, 1997 at 62 FedReg 32974, July 14, 1997 at 62 FedReg 37694, August 28, 1997 at 62 FedReg 45568, May 4, 1998 at 63 FedReg 24596, May 26, 1998 at 63 FedReg 28556, June 8, 1998 at 63 FedReg 31266, June 29, 1998 at 63 FedReg 35147, August 6, 1998 at 63 FedReg 42110, August 10, 1998 at 63 FedReg 42580, and August 31, 1998 at 63 FedReg 46332. The June 17, 1997 federal promulgation includes revisions to the land disposal restrictions under 40 CFR Part 268 to remove land disposal restrictions for K160, U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, and U407. In addition, the descriptions of the K156, K157, and K158 wastes in 40 CFR §268.40 are amended in the June 17, 1997 promulgation to reflect the fact that they do not apply to wastes from production of 3-iodo-2-propynyl n-butylcarbamate. The July 14, 1997 federal promulgation includes the three-month extension of the national capacity variance for spent potliners from primary aluminum production (hazardous waste number K088), under 40 CFR §268.39(c). The August 28, 1997 federal promulgation includes the one-year extension of the alternate carbamate treatment standards under 40 CFR §268.40(g) and §268.48(a). The May 4, 1998 federal promulgation includes revisions to the land disposal restrictions under 40 CFR Part 268 concerning certain organobromine production wastes, and applies the universal treatment standards (UTS) to these wastes. The May 26, 1998 federal promulgation includes Phase IV land disposal restrictions concerning treatment standards for metal wastes and mineral processing wastes and treatment standards for hazardous soils. It applies the universal treatment standards to newly identified characteristic mineral processing wastes. As noted by EPA at 63 FedReg 28572, "(i)n earlier rules and a Report to Congress, EPA has determined which mineral processing wastes are not excluded in the Bevill Amendment and are thus considered 'newly identified' wastes subject to RCRA regulations. (See 54 FR 36592, September 1, 1989; 55 FR 2322, January 23, 1990; and Report to Congress on Special Wastes from Mineral Processing, USEPA, July 31, 1990.) The treatment standards being promulgated today are located in the table 'Treatment Standards for Hazardous Wastes' at §268.40 in the regulatory language for today's rule. The wastes are identified by characteristic waste code (e.g. D002 corrosive waste, or D008 TC lead waste); there is no separate section in that table for characteristic mineral processing wastes." In the May 26, 1998 promulgation, EPA finalized LDR metal treatment standards in two ways. First, EPA revised the UTS levels for ten metal constituents in nonwastewater forms of hazardous wastes (i.e., antimony, barium, beryllium, cadmium, chromium, lead, nickel, selenium, silver, and thallium). In addition, EPA applied the UTS for the first time to eight toxicity characteristic (TC) metal wastes (i.e., arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. It should be noted that the UTS apply to both wastewater and nonwastewater forms of the TC wastes (except for TC arsenic wastes, for which the UTS apply to wastewater forms only), and to both organic and metal underlying hazardous constituents in them. The EPA also adjusted the treatment standards for vanadium in P019 and P020 nonwastewaters as well as zinc in K061 nonwastewaters. Finally, the May 26, 1998 federal promulgation also establishes LDR standards for a new treatability group, contaminated soils. Generators of contaminated soil have the option of complying with either the existing treatment standards for industrial hazardous waste (i.e., the universal treatment standards) or the soil treatment standards. These alternative LDR treatment standards for soil were promulgated under 40 CFR §268.49, and generally require 90 percent reduction in constituent concentrations, except that when any constituent subject to treatment to the 90 percent reduction standard would result in a concentration less than 10 times the UTS for that constituent, treatment to achieve constituent concentrations less than 10 times the UTS is not required. UTS are identified in 40 CFR §268.48. The June 8, 1998 federal promulgation includes a correction to page 28751 of the May 26, 1998 promulgation, inserting the word "adding" in amendatory instruction 19, just before the phrase "two entries for waste code F035." The June 29, 1998 federal promulgation includes technical amendments to the land disposal restrictions relating to organobromine production hazardous wastes, correcting purely technical errors under 40 CFR §268.33 and §268.40. The August 6, 1998 federal promulgation includes revisions to 40 CFR Part 268 related to petroleum refining process wastes, and applies the UTS to the petroleum refining process wastes listed in the August 6, 1998 rulemaking (i.e., K169 - crude oil tank sediment from petroleum refining operations, K170 - clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, K171 - spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, excluding inert support media, and K172 - spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, excluding inert support media). In 40 CFR §268.40, the Table of Treatment Standards was

amended under the aforementioned August 6, 1998 federal promulgation to add the following regulated hazardous constituents for the petroleum refining process wastes, as follows: K169 (benz(a)anthracene, benzene, benzo(g,h,i)perylene, chrysene, ethyl benzene, fluorene, naphthalene, phenanthrene, pyrene, toluene, and xylene(s) (total)); K170 (benz(a)anthracene, benzene, benzo(g,h,i)perylene, chrysene, dibenz(a,h)anthracene, ethyl benzene, fluorene, indeno(1,2,3,-cd)pyrene, naphthalene, phenanthrene, pyrene, toluene, and xylene(s) (total)); K171 (arsenic, benz(a)anthracene, benzene, chrysene, ethyl benzene, naphthalene, nickel, phenanthrene, pyrene, reactive sulfides, toluene, vanadium, and xylene(s) (total)); K172 (antimony, arsenic, benzene, ethyl benzene, nickel, reactive sulfides, toluene, vanadium, and xylene(s) (total)). The August 10, 1998 federal promulgation includes corrections and technical amendments to the previous promulgations of May 4, May 26, and June 29, 1998. No new regulatory requirements were added by the August 10, 1998 promulgation. Rather, it clarified requirements by correcting a number of errors in the aforementioned previous promulgations, including corrections to certain effective dates and withdrawal of certain previous amendments as follows: amendment 10 to 40 CFR §268.40 and amendment 11 to 40 CFR §268.48 on pages 24625 and 24626 in the rule published May 4, 1998, and amendment 5 on page 35149 in the rule published June 29, 1998 were withdrawn. The August 31, 1998 federal promulgation includes an amendment to 40 CFR §268.40 by adding new paragraph (i), which in effect stays the Phase IV rule insofar as it applies treatment standards for hazardous constituent metals in zinc-containing fertilizers that are produced from hazardous wastes which exhibit the toxicity characteristic.

FISCAL NOTE. Jeffrey Horvath, Strategic Planning and Appropriations Division, has determined that for the first five- year period the sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections.

PUBLIC BENEFIT. Mr. Horvath also has determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be simplification of existing regulations, enhanced consistency between federal and state waste regulatory requirements, more cost-effective regulation of waste management activities, and improvements in the management of hazardous waste and hazardous waste facilities. The proposed amendments generally incorporate existing federal regulations and certain streamlining provisions. There are no significant economic costs anticipated to any person, including any small business, required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although this rule is proposed to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule updates the state's hazardous waste regulations, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. This overall benefit from updating the hazardous waste regulations is derived, for example, from adopting more recent federal land disposal restriction regulations, certain of which provide improved treatment standards for soil contaminated with hazardous waste and which contain revised and new exclusions from the definition of "solid waste." By using the improved treatment standards for soil contaminated with hazardous waste, the environment and public health and safety is beneficially affected because these improved standards are designed to expedite cleanups. The revised and new exclusions from the definition of solid waste provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. Furthermore, reducing costs in this area allows more funds to be expended to protect the environment, thus providing a benefit to the environment and public health and safety. The rule also provides benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities. By the very nature of being an improvement, the environment and public health and safety are benefitted. Another way of explaining this environmental and public health benefit is that the more recent federal regulations are generally more protective of the environment and public health and safety than the older regulations they replaced. Furthermore, enhanced consistency between the federal and state programs tends to free up resources that would otherwise be spent on determining which requirement (i.e., state or federal) applies to particular aspects of a company's waste management operations. Thus, not only is there an economic benefit by not having to keep track of which requirements apply to what, but an environmental and public health benefit as well, because this allows more funds to be expended to protect the environment. The rule provides a benefit, as opposed to an adverse effect in a material way, to the economy, a sector of the economy, productivity, competition, and jobs, by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to more cost-effective regulation of waste management activities, as discussed above. In addition, by advancing the rules to allow for further authorization by the EPA, the regulated community is faced with less dual regulation, which in turn frees up resources and fosters the concomitant economic and environmental benefits discussed above. An analysis of the specific regulations under this proposal shows that the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because either the regulation is less stringent than the regulation it is replacing, or the regulation is a promulgation under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and, as such, the U.S. EPA is implementing the regulation. Therefore, there are no additional costs incurred by affected owners and operators because they are already having to comply with this rule, if applicable to them. The reason there is no adverse effect in a material way on the environment, or the public health

and safety of the state or a sector of the state is because these proposed rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because the purpose of this proposal is to adopt state rules which are equivalent to the corresponding federal regulations. This proposal does not exceed an express requirement of state law because either there are no express requirements in state law under which these rules are proposed or because the express requirements of state law are being matched in this proposal (e.g., the definition of "solid waste" under proposed §335.119(A)(iv)). This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the express purpose of this proposal is to help maintain RCRA authorization. The delegation agreement between the commission and the U.S. Environmental Protection Agency expressly requires the commission to maintain RCRA authorization. This proposal does not adopt a rule solely under the general powers of the agency (e.g., Texas Water Code §5.103 and §5.105), but rather under a specific state law (i.e., Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024).

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules would substantially advance this stated purpose by adopting federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. Promulgation and enforcement of these proposed rules would not affect private real property which is the subject of the rules because the proposed rule language consists of updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations. There is no burden on private real property because 42 U.S.C. 6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the portions of this proposal which are more stringent than existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden if and when the state adopts these proposed rules. The subject proposed regulations do not affect a landowner's rights in private real property. Also, the following exception to the application of Chapter 2007 of the Texas Government Code listed in Texas Gov't Code Sec. 2007.003(b) applies to these rules: this action is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM. The commission has reviewed this rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this proposed rule would be consistent with the applicable CMP goals and policies because the rule amendments would update and enhance the commission's rules concerning hazardous and industrial solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

SUBMITTAL OF COMMENTS. Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by December 28, 1998, and should reference Rule Log No. 98041-335- WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239- 6814.

STATUTORY AUTHORITY. The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.1. Definitions.

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

(1)-(118) (No change.)

(119) Solid Waste -

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man- made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man- made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.4(a)(1) - (14), as amended through August 6, 1998 [~~May 12, 1997~~], at 63 FedReg 42110[~~62 FedReg 25998~~], by 40 CFR §261.4(a)(16), as amended through May 26, 1998 at 63 FedReg 28556, by 40 CFR §261.4(a)(18) - (19), as amended through August 6, 1998, at 63 FedReg 42110, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR [~~Code of Federal Regulations~~] §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR [~~Code of Federal Regulations~~] §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16).

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure 1: 30 TAC §335.1(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR [~~Code of Federal Regulations~~] §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(16) apply rather than this provision.

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the Environmental Protection Agency, as described in 40 CFR [~~Code of Federal Regulations~~] §261.2(d)(1)-§261.2(d)(2).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR [~~Code of Federal Regulations~~] §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(J) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(120)-(149) (No change.)

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

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

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 Code of Federal Regulations §261.4(a)(14)[~~(13)~~])).

(11)-(12) (No change.)

(b) (No change.)

§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

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

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use

Determinations for Tax Exemption for Pollution Control Property) or Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

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

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11[~~; and~~]

[~~(5) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C~~].

(d)-(m) (No change.)

§335.29. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

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

(4) Appendix VII - Basis for Listing Hazardous Waste (as amended through August 6, 1998 [~~February 9, 1995~~], at 63 FedReg 42110 [~~60 FedReg 7824~~]);

(5) Appendix VIII–Hazardous Constituents (as amended through May 4, 1998 [~~April 17, 1995~~], at 63 FedReg 24596 [~~60 FedReg 19165~~]); and

(6) (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, 1998.

TRD-9817537

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 239–6087

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Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

Division 2. Hazardous Waste Burned for Energy Recovery

30 TAC §335.221

STATUTORY AUTHORITY. The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement Texas Health and Safety Code, Chapter 361.

§335.221. Applicability and Standards.

(a) (No change.)

(b) The following hazardous wastes and facilities are not regulated under §§335.221- 335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) (No change.)

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)(3)-(4) [~~(5)~~] of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

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

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

Filed with the Office of the Secretary of State, on November 13, 1998.

TRD-9817538
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 239–6087

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Subchapter O. Land Disposal Restrictions

30 TAC §335.431

STATUTORY AUTHORITY. The amendment is proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement Texas Health and Safety Code, Chapter 361.

§335.431. Purpose, Scope, and Applicability.

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

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR, Part 268, as amended through August 31, 1998, in 63 FedReg 46332 [~~May 12, 1997, in 62 FedReg 25998~~] are adopted by reference.

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

(d) (No change.)

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

Filed with the Office of the Secretary of State, on November 13, 1998.

TRD-9817539

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 27, 1998

For further information, please call: (512) 239–6087

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 151. General Provisions

37 TAC 151.55

The Texas Department of Criminal Justice proposes an amendment to §151.55 concerning the disposal of surplus agricultural goods and agricultural personal property.

David P. McNutt, Director of Financial Services for the Texas Department of Criminal Justice has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Mr. McNutt also has determined that for each year of the first five year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be increased accountability for the disposal of surplus agricultural goods and agricultural personal property. There will be no effect on small businesses. There is no anticipated economic costs to persons required to comply with the amendment as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under Government Code, §497.113, which specifically authorizes this section and §492.013, which grants rulemaking authority to the Board. Cross Reference to Statute: Government Code, §497.113.

§151.55. Disposal of Surplus Agricultural Goods and Agricultural Personal Property.

(a) Policy. It is the policy of the Board that surplus agricultural goods produced by TDCJ and surplus agricultural personal property utilized in TCDJ's agricultural operations be disposed in the most efficient manner possible for the goods or personal property being disposed.

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

(1) Surplus agricultural goods - Those agricultural commodities grown, produced, purchased, or acquired by TDCJ for use within TDCJ or other state or local agency or non-profit organization which are excess to the needs of TDCJ operations, which are not required for its foreseeable needs, and which have been determined to be surplus by the Deputy Executive Director in coordination with the Assistant Director for Agriculture [~~Division Director for Administrative Services~~].

(2) Surplus agricultural personal property - Personal property related to agricultural operations of TDCJ and grown, produced, purchased, or acquired by TDCJ, including livestock and farming equipment and implements, which is excess to the needs of TDCJ operations, which is not required for its foreseeable needs, and which has been determined to be surplus by the Deputy Executive Director [~~Division Director for Administrative Services~~].

(c) Procedures.

(1) The board hereby authorizes the Deputy Executive [~~Division~~] Director or his Designee [~~of the Institutional Division and the TDCJ Division Director of Administrative Services~~] to sell or dispose of surplus agricultural goods and surplus agricultural personal property. Sale or disposal shall be accomplished in such manner so as to provide, if possible, reasonable consideration for the sale or disposal of such surplus items.

(2) When items of agricultural goods or agricultural personal property are considered surplus, the Assistant Director for Agriculture shall provide a written report to the Deputy Executive [~~Division~~] Director [~~for Administrative Services~~] setting forth those items of agricultural goods and agricultural personal property considered to be surplus. In those instances requiring immediate action due to the perishable nature of such items, the report may be transmitted via Facsimile (Fax) with written follow-up by mail. The Deputy Executive [~~Division~~] Director [~~for Administrative Services~~] shall review such report and determine if such items shall be sold or disposed as surplus agricultural goods or personal property.

(3) The Deputy Executive [~~Division~~] Director [~~of the Institutional Division and Division Director for Administrative Services~~] shall review the report submitted as required herein and shall determine if such reported items are surplus to the needs of TDCJ, and the terms and method of sale or disposal of such surplus agricultural goods and surplus agricultural personal property. [~~If such items are~~

~~determined to be surplus, the proposed sale or disposal of surplus agricultural goods and surplus agricultural personal property shall be approved by the Division Director of the Institutional Division and the Division Director for Administrative Services who shall additionally determine, based on market conditions at the time of sale or disposal, the terms and method of sale or disposal of such surplus agricultural goods and surplus agricultural personal property.~~] Sale or disposal of surplus agricultural goods or agricultural personal property includes:

(A)-(D) (No change.)

(4)-(6) (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 16, 1998.

TRD-9817576
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 463–9693

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Chapter 155. Reports and Information Gathering

Subchapter C. Procedures for Resolving Contract Claims and Disputes

37 TAC §155.31

The Texas Department of Criminal Justice proposes new §155.31, concerning establishing the eligibility procedures for resolving contract claims and disputes. The new section establishes procedures for resolving contract claims and disputes between TDCJ and other contract parties with respect to construction and non-construction contracts.

David P. McNutt, Director of Financial Services for the Texas Department of Criminal Justice has determined that for the first five year period the section is effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section as proposed.

Mr. McNutt also has determined that for the first five year period the section is effect the public benefit anticipated as a result of enforcing the section as proposed will be to resolve contract claims as efficiently and as expeditiously as possible. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the new section as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Government Code, §492.013, which grants general rulemaking authority.

There is no cross reference to statute.

§155.31. Establishing Procedures for Resolving Contract Claims and Disputes.

(a) Purpose. The purpose of this section is to establish procedures for resolving contract claims and disputes between TDCJ and other contract parties with respect to construction and non-construction contracts.

(b) Policy. It is the policy of the Texas Board of Criminal Justice (the Board) and TDCJ to resolve contract claims as efficiently and as expeditiously as possible, consistent with prudent stewardship of State of Texas assets.

(c) Procedures.

(1) Contract Claim Committee (the Committee).

(A) The executive director will name the members and chairman of a Committee or Committees to serve at his or her pleasure. It will be the responsibility of the Committee to gather information, study, and meet informally with contractors, if requested, to resolve any disputes that may exist between the department office and the contractor, and which result in one or more contract claims or disputes.

(B) TDCJ stresses that, to every extent possible, disputes between a contractor and the engineer or other department employee in charge of a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a contract claim or dispute is not reached with the department office, the contractor should file a detailed report and request with the department office director under whose administration the contract was or is being performed. The filed documents will be transmitted to the Committee.

(C) The Committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office it deems appropriate.

(D) The Committee will then afford the contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the contractor an opportunity to present relevant information and respond to information the Committee has received from the department office.

(E) The Committee chairman will give written notice of the Committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the Committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward the agreed disposition to the executive director for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the Committee, the contractor may petition the executive director.

(2) Appeal to the Executive Director.

(A) An aggrieved contractor may file a written appeal of the Committee's decision to the executive director within ten days of the Committee's decision. The executive director may uphold, reverse, or modify the decision of the Committee.

(B) The executive director will give written notice of his or her proposed disposition of the claim or dispute to the contractor. If that disposition is acceptable, the contractor shall advise the executive director, in writing, within 20 days of the date such notice is received.

(3) Mediation. If that disposition is not acceptable to the contractor, the contractor and TDCJ shall agree to mediate in good faith in an attempt to resolve the claim or dispute. TDCJ and the contractor shall agree to a mediator and shall conduct such mediation

pursuant to Chapter 2008 of the Texas Government Code, §§154.051-154.073 of the Texas Civil Practice and Remedies Code.

(4) Unsuccessful Mediation. In the event mediation does not resolve the claim or dispute to the satisfaction of the contractor and TDCJ, the parties may pursue legal remedies that would otherwise be available. TDCJ and the Board do not waive the right of sovereign immunity from suit or liability due to the establishment of this Rule.

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 16, 1998.

TRD-9817575
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 27, 1998
For further information, please call: (512) 463–9693

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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 filling 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 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.415

The Texas Department of Insurance has withdrawn from consideration for permanent adoption the amendment to §1.415, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11555).

Filed with the Office of the Secretary of State on November 16, 1998.

TRD-9817601
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 16, 1998
For further information, please call: (512) 463–6327

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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 IV. Office of the Secretary of State

Chapter 81. Elections

Subchapter E. Miscellaneous

1 TAC §81.72

The Office of the Secretary of State, Elections Division, adopts new §81.72, concerning when the early voting ballot board (the "board") must convene to count late ballots cast in all elections other than a "general election for state and county officers" and primary elections as published in the June 26, 1998 issue of the *Texas Register* (23 TexReg 6675).

This rule is being adopted to set a time frame within which the board must convene and count late early voting ballots cast from outside the country so that the governing body of the territory conducting the election can timely canvass the election returns no earlier than the third day or later than the sixth day after election day in accordance with §61.003(2) of the Texas Election Code (the "Code").

No comments were received regarding adoption of the new rule.

The rule is adopted under the Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code.

Section 67.003(2), §86.007(d)(3)(B) and §87.125 of the Code are affected by this 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, 1998.

TRD-9817530
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Effective date: December 3, 1998
Proposal publication date: June 26, 1998
For further information, please call: (512) 463–5650

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TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Economic Development

Chapter 195. Memoranda of Understanding

10 TAC §§195.1–195.14

The Texas Department of Economic Development (Department) adopts the repeal of Chapter 195, §§195.1–195.14, in its entirety without changes as published in the September 25, 1998 issue of the *Texas Register* (23 TexReg 9675). , concerning Memoranda of Understanding with the Texas Education Agency, Higher Education Coordinating Board, Texas Department of Human Services, Alternative Fuels Council, Texas Department of Housing and Community Affairs, Texas Parks and Wildlife Department, General Services Commission, Texas Department of Agriculture, Texas Historical Commission, Texas Employment Commission, Comptroller of Public Accounts, Texas General Land Office, Texas Department of Transportation and Texas Parks and Wildlife Department, and the Texas Natural Resource Conservation Commission.

The repeal is necessary to accurately reflect current law and to allow the adoption of new rules. Senate Bill 932 of the 75th Legislature, which abolished the Texas Department of Commerce and created the Texas Department of Economic Development, also amended Government Code, §481.028(b), which applies to Memoranda of Understanding with various state agencies. Texas Government Code, §481.028(b), requires that the Department enter into a memoranda of understanding with other state agencies involved in economic development to cooperate in planning and budgeting.

No comments were received regarding adoption of the repeal.

The repeal of Chapter 195 is adopted under the authority of Texas Government Code, §481.0044(a) which requires the Department to adopt rules to carry out its responsibilities; Texas Government Code, §481.028(d) which directs that the Memoranda of Understanding be adopted as rules of the agencies; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Section 481.028 is affected by the adopted 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 16, 1998.

TRD-9817573
Gary Rosenquest
Chief, Administrative Officer
Texas Department of Economic Development
Effective date: December 6, 1998
Proposal publication date: September 25, 1998
For further information, please call: (512) 936–0181

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10 TAC §§195.1–195.10

The Department adopts new Chapter 195. Sections 195.1-195.10, concerning Memoranda of Understanding with the Department of Agriculture, Texas Workforce Commission, General Land Office, Texas Department of Housing and Community Affairs, Comptroller of Public Accounts, Texas Department of Transportation, Parks and Wildlife Department, Texas Natural Resource Conservation Commission, Texas Historical Commission, General Services Commission, Alternative Fuels Council, and Texas Agricultural Finance Authority. Section 195.6 is being adopted with changes from the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9675). Sections 195.1-195.5 and Sections 195.7-195.10 are being adopted without changes and will not be republished.

Texas Government Code, §481.028, requires that the Department enter into a Memoranda of Understanding with other state agencies involved in economic development to cooperate in planning and budgeting and directs the Department to enter into memoranda of understanding with the agencies listed above. Texas Government Code, §481.028, further directs that the Memoranda of Understanding be adopted as rules of the agencies. The rules as adopted will have the effect of increasing cooperation and communication between the Department and other agencies involved with economic development with regard to program planning and budgeting.

Section 195.6 is being adopted with changes because two paragraphs that do not appear in the final version of the Memorandum of Understanding signed by the agencies were inadvertently included in the text published in the *Texas Register*.

No comments were received regarding the adoption of the new chapter.

Sections 195.1-195.10 are adopted under the authority of Texas Government Code, §481.0044(a) which requires the Department adopt rules to carry out its responsibilities; Texas Government Code, §481.028(d) which directs that the Memoranda of Understanding be adopted as rules of the agencies; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Section 481.028 is affected by the adopted rules.

§195.6. Memorandum of Understanding with the Texas Department of Transportation and the Texas Parks and Wildlife Department.

(a) Parties. Pursuant to Texas Government Code §481.028(5), this memorandum of understanding is made and entered into by and between the Texas Department of Economic Development (Department), the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department (TPWD) to formalize their agreement to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers.

(b) Recitals. The Department, TxDOT and TPWD are the three major state agencies responsible for promoting travel and tourism in Texas. Texas Government Code §181.172 sets forth the responsibilities of the Department in promoting Texas as a tourist destination. Texas Government Code §181.172(5) and (6) direct that the Department cooperate with TxDOT and TPWD in tourism matters. Texas Government Code §181.122(b)(1) requires the Department to promote Texas as an attraction for tourism. Article 6144(e), Texas Civil Statutes (1995) authorizes TxDOT to publish such pamphlets, bulletins, maps and documents as it deems necessary to serve the motoring public and road users. Article 6144(e) requires TxDOT to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance and various descriptive materials designed to aid and assist the traveling public and to stimulate travel to and within Texas. Parks and Wildlife Code §§11.033(2), 11.054(a)(1), 13.017(a) and 31.002 authorize TPWD to expend certain funds and provide certain information to the public relating to wildlife management, nongame and endangered species conservation, public parks and water safety.

(c) Undertakings by each Party. The parties agree to cooperate on developing and promoting Texas as a premier travel destination in fourteen subject areas. The subject areas and each agency's responsibilities are as follows:

(1) Marketing. The Department, TxDOT and TPWD will form a tri-agency marketing group that will develop guidelines and policies to encourage the use of a unified travel and tourism marketing theme for the state. The current theme is "Texas. It's Like a Whole Other Country." The tri-agency marketing group will be comprised of the Executive Directors of the three agencies or their designees. Other staff members from the three agencies may be brought into the meetings of the tri-agency marketing group to provide expertise on certain issues. These other staff members, however, will not have decision-making authority. The tri-agency marketing group will meet quarterly. Decisions of the tri-agency marketing group will be made by consensus. The mission of the tri-agency marketing group will be to guide and coordinate the statewide travel-related advertisements, promotions, media relations and collateral pieces of the three agencies. The tri-agency marketing group will advise and make recommendations on the appropriate tone and message for the marketing efforts of the three agencies. Each agency will pay for its own marketing and promotional activities. Each agency will be responsible for ensuring that its statewide marketing, promotional, and informational materials use the consistent message developed and adhere to the guidelines established by the tri-agency marketing group. The Department owns the trademark to "Texas. It's Like a Whole Other Country." The Department will develop a licensing agreement with TxDOT and TPWD to allow them to use this trademarked theme.

(2) Magazines. The magazine staffs of Texas Highways and Texas Parks & Wildlife and the media staff from the Department will meet at least twice a year to address opportunities that promise to enhance Texas travel and tourism through these two magazines. Information of mutual interest and opportunities for sharing resources will be included in these meetings.

(3) TOURTEX 2000. TxDOT serves as the lead agency in developing and managing the TOURTEX 2000 electronic information system. TxDOT will operate and be responsible for the financial support of TOURTEX 2000. TxDOT will solicit partnerships for the system with local chambers of commerce, convention and visitors bureaus or city tourism offices. The Department will assist TxDOT in the development of a trade component for the system so that detailed information for tour operators and travel agents may be provided electronically. All three agencies agree to investigate

additional methods of marketing and other potential outlets for the travel information.

(4) Travel Information Centers. TxDOT will continue to operate and fund TxDOT's existing travel information centers. TxDOT will continue providing collateral materials and advice to city information centers in an effort to expand state traveler information throughout Texas. TPWD will consider using facilities at state parks as distribution points for travel information. The Department and TPWD will support the development of the travel information centers and may provide information to them when appropriate.

(5) Shows. The tri-agency marketing group will develop a comprehensive marketing plan for the three agencies' participation in various consumer and travel trade shows/initiatives. These shows may be in-state, out-of-state, or international. The tri-agency marketing group will decide upon the show schedule prior to fiscal year budget planning deadlines. Each of the three agencies may play a role in staffing the shows, depending upon each agency's focus and budget restrictions. Each agency will be responsible for its participation costs at such trade shows. The agencies will use a unified travel and tourism marketing theme in a manner appropriate for each show. Texas ancillary products and magazines may be promoted at these shows. The Department will be the prime Texas representative at out-of-state and international trade shows. TxDOT and TPWD may participate at other shows with collateral materials and staff where appropriate.

(6) Research/Information Sharing. The three agencies will meet quarterly to discuss research workplans and projects to ensure that the State's research is comprehensive and appropriate to guide the marketing and promotional activities of the three agencies. The Department will take the lead in conducting and gathering Texas tourism research. TxDOT and TPWD may conduct other research independently. Each agency will pay for its own research or share costs as may be identified in the research workplans. The three agencies will distribute their new research publications, as they are completed and become available, to the other agencies.

(7) Community Profiles. The Department maintains a computer database containing community profiles for use by communities seeking business prospects or funding from public and private sources. The Department will continue to develop this system and will provide TxDOT and TPWD access to it.

(8) Community Education/Training. The Department will take the lead in organizing community training and education for tourism development. TxDOT and TPWD will assist in the organization and sponsorship of these community training sessions, together with other state, regional and local organizations. Training sessions may include nature tourism, hospitality training, development and funding techniques and the integration of existing training offered by TxDOT to its travel counselors. In addition, the Department will assist communities through development booklets, tip sheets and basic counseling/assistance over the telephone. TPWD will offer nature tourism outreach and assistance through various means.

(9) Tourism Business Assistance. The Department will play a lead role in providing information and contacts to companies and individuals seeking to develop tourism-related properties and attractions. TxDOT and TPWD may provide expertise in this area when needed.

(10) 1-800 Numbers. The Department, TxDOT and TPWD each maintain toll-free telephone numbers for different purposes (advertising fulfillment, travel counseling and weather conditions, etc.). The three agencies will investigate the feasibility of combining some of these lines. In addition, the three agencies will form a team of individuals from the entities involved in the operation of the State's main 1-800 number (1-800-8888-TEX). This main 1-800 line handles inquiries to the State's tourism advertising campaign. This team will work to ensure the efficient operation of the 1-800 number and coordinate activities between the 1-800 number and fulfillment operations.

(11) Fulfillment Operation. Fulfillment refers to the act of responding to a request for consumer travel information. TxDOT serves as the lead agency in travel literature fulfillment. TxDOT will manage the State's main fulfillment operation, providing information to inquiries generated by the State's advertising and other marketing efforts. These inquiries may be from phone calls, coupons, tip-in cards or other means. The Department will provide TxDOT with quality inquiries from tip-in cards and the main 1-800 number line in a timely fashion for TxDOT to fulfill. The three agencies agree that the level of the State's advertising program has budget implications for each of the agencies. Because the volume of travel literature requests directly drives TxDOT's budget expenditure in production and fulfillment operations, the three agencies agree to make the best possible projections of annual fulfillments so that accurate budgets may be formulated. TxDOT will manage and pay for materials, postage and labor for the fulfillment of inquiries from the general public. The Department will manage and pay for postage and labor to fulfill inquiries generated from travel trade marketing efforts. TxDOT will pay only for TxDOT-produced travel literature for travel trade inquiries. As the lead fulfillment agency, TxDOT is responsible for the final accuracy and management of the master data file. Until all daily file corrections have been made, none of the three agencies will use the data for statistical or reporting purposes. Only correct and complete data entries will be loaded onto the TRAX database. This fulfillment operation agreement does not provide for any magazine or ancillary products fulfillment operations.

(12) Collateral Materials. TxDOT will provide a Travel Literature Unit to produce most travel- and tourism-related publications required by the Department, TxDOT and TPWD. This unit will be composed of TxDOT employees who will work directly with individuals from the three agencies to ensure that the pieces meet the needs of their intended audiences, are completed in a timely manner and fall within budget. The three agencies agree that TxDOT's Travel Literature Unit must be kept informed about budgeted publications of all three agencies early enough to incorporate resource needs. A means of timely and accurate communication of this information will be established by the tri-agency marketing group. Examples of tasks performed by the TxDOT unit include: writing specifications for contracting outside services, setting deadlines, editing, designing, and overseeing quality control of the publications. Advertising sales will remain with each respective agency. The tri-agency marketing group will provide general guidance towards maintaining consistency among all Texas travel publications, while allowing for differentiated attributes necessary for individual pieces to meet their intended purposes. The tri-agency marketing group will recommend appropriate methods to ensure equitable agency contributions to TxDOT of the costs of shared resources and indirect costs of each agency's own publications. The tri-agency group also will resolve any problems concerning the application of available resources and completion dates for various publication projects. Each agency reserves the right to produce its own collateral materials when desired or appropriate.

(d) Term. This MOU, which is effective upon execution by representatives of each agency, shall terminate on August 31, 1999 unless terminated earlier pursuant to subsection (e) of this section or unless extended by the mutual agreement of the parties.

(e) Termination. Any of the three agencies shall have the right, in such agency's sole discretion, and at such agency's sole option, to terminate and bring to an end all performances to be rendered under this agreement, such termination to be effective 60 days after receipt of written notification by the other parties.

(f) Amendments and Changes. Any alteration, addition, or deletion to the terms of this agreement shall be by amendment hereto in writing and executed by all three parties, except as may be expressly provided for in some manner by the terms of this agreement.

(g) Adoption as Rule. Each agency shall adopt this MOU as a rule in compliance with §481.028, Texas Government Code.

(h) Compliance with Laws and Budgetary Constraints. The obligations of the parties in carrying out the provisions of this MOU are subject to the statutory authority of each agency, all other applicable laws and the appropriations available to each agency to accomplish the purposes set forth herein.

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 16, 1998.

TRD-9817574
Gary Rosenquest
Chief, Administrative Officer
Texas Department of Economic Development
Effective date: December 6, 1998
Proposal publication date: September 25, 1998
For further information, please call: (512) 936–0181

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TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 24. Restricted Cultural Resource Information

13 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19, 24.21, 24.23

The Texas Historical Commission adopts new §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19, 24.21, and 24.23, concerning provisions for the restriction of sensitive cultural resource information. These sections are adopted without changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 8953).

Section 24.1 defines the objectives of these rules.

Section 24.3 discusses the scope of the intent of the rules that restrict cultural resource information.

Section 24.5 discusses compliance issues associated with the use of restricted information.

Section 24.7 provides definitions of terms used in the section.

Section 24.9 provides a definition of the Texas Historic Sites Atlas.

Section 24.11 defines what information the THC holds that is not restricted.

Section 24.13 defines what information the THC holds that is restricted.

Section 24.15 explains the process for obtaining information.

Section 24.17 discusses the criteria for access to restricted information.

Section 24.19 discusses how to apply for access to restricted information.

Section 24.21 discusses memoranda of understandings related to the use of restricted information.

Section 24.23 discusses access committee procedures.

The new rules concern public access to cultural resource information contained within our libraries, files, and databases. The chapter defines public and restricted cultural resource information, establishes criteria for access to restricted data, and outline the registration procedures required for access to, and use of the information held by the commission in its libraries, files, documents, maps, and contained in the Texas Historic Sites Atlas (THSA). These rules protect fragile properties, particularly those subject to looting and vandalism, the commission will withhold information about the location and character of such properties, and thereby will assist in the protection of those resources for the benefit of the State of Texas and its citizens.

These rules establish a procedure that the commission must follow in order to grant access to the restricted data held by the commission. Under these rules an access committee is created that will review applications and determine who may have access to restricted site data. In any contested case decisions the applicant may be appeal any decision to the commission for a final ruling.

The agency received no comments regarding these new proposed rules.

The new section is adopted under the Section 442,005(q) of the Texas Government Code, Title 13, Part II (revised by Sunset Review process and the 70th Legislature in 1995, and by the 75th Legislature, effective Sept. 1, 1997), and Section 191.052 of the Texas Natural Resources Code, which authorizes the Texas Historical Commission to promulgate rules and set conditions to reasonably effect the purposes of this section. The provisions of Part II are issued under Texas Civil Statutes, Article 6145, §§1,3(c), and 9(a).

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 16, 1998.

TRD-9817571
Curtis Tunnell
Executive Director
Texas Historical Commission
Effective date: December 6, 1998
Proposal publication date: September 4, 1998
For further information, please call: (512) 463–5711

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantial Rules

Subchapter E. Customer Service and Protection

16 TAC 23.48

The Public Utility Commission of Texas adopts the repeal of §23.48, relating to Continuity of Service with no changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6114) and will not be republished. The repeal is necessary to avoid duplicative rule sections. The commission has adopted §25.52 of this title (relating to Continuity of Service) as it pertains to electric service providers, and §26.51 of this title (relating to Continuity of Service) as it pertains to telecommunications service providers to replace §23.48. This repeal is adopted under Project Number 19198.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

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 16, 1998.

TRD-9817550
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 6, 1998
For further information, please call: (512) 936–7308

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Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter C. Quality of Service

16 TAC §25.52

The Public Utility Commission of Texas adopts new §25.52 relating to Reliability and Continuity of Service with changes to the proposed text as published in the *Texas Register* on June 12, 1998, (23 TexReg 6115). This section was adopted under Project Number 19198. This section is necessary to replace §23.48 of this title (relating to Continuity of Service).

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 25 has been established for all commission substantive rules applicable to electric service providers. With the adoption of this section, the commission also repeals duplicative §23.48. The commission requested specific comments on the §167 requirement as to whether the reason for adopting §23.48 continues to exist in adopting §25.52 to replace §23.48 No parties commented on the §167 requirement. The commission finds that the reason for adopting this section continues to exist.

The public's heightened concern that electric utilities in Texas provide customers with uninterrupted electricity service to the greatest reasonable degree warrants these additional requirements. Advances in interruption detection and recording capabilities enable utilities more effectively to monitor, prevent, and shorten interruptions, and also permit the commission to establish meaningful reliability performance requirements. The Legislature has charged the commission with the responsibility to ensure that electric utilities furnish safe, adequate, efficient, and reliable service, instrumentalities, and facilities. (Public Utility Regulatory Act §32.001). Recent experience has demonstrated that both the commission and electric utilities should monitor utility reliability performance and take necessary measures when a utility has not provided adequate service reliability.

Section 25.52 applies more precise interruption record-keeping and reporting requirements. To the extent possible, each electric utility must maintain complete records of emergency, scheduled, and momentary interruptions, and maintain such records for five years. This section requires each electric utility to report to the commission basic information concerning extensive and significant interruptions as soon as reasonably possible, to update the information each day until the interruption ends, and to provide the commission with a report summarizing the extent, cause, and magnitude of the interruption. The commission believes that it should be fully informed during periods of extensive interruptions, both to respond to customer and public inquiries and to ensure that the affected utility acts promptly and reasonably during such interruptions. Commission access to relevant information concerning the interruption constitutes a key requirement to fulfilling this objective. The section also requires utilities to notify the commission how each intends to address through its emergency operations plan any adverse situations arising from Year-2000 related problems.

On July 16, 1997, the commission adopted a service quality report form pursuant to §23.11(i) of this title (now §25.81), relating to General Reports. The form requires electric utilities to record specific information regarding interruptions, and requires utilities to report reliability information to the commission semi-annually. Section 52.25 furthers the objectives of the form-reporting requirements by adopting minimum interruption frequency and duration standards, and requiring improvements of poor performing facilities. In addition, utilities will be required to operate the distribution system so that no feeder is among the worst performing for two or more consecutive years. This portion of the section ensures that the customers who received

service below the standard in 1999 do not received service below the standard in 2000.

The commission received comments in Project 19198 from interested parties on July 13, 1998, and held a public hearing on August 13, 1998. In response to the comments and the discussions at the workshop, the commission also requested reply comments that were filed on August 27, 1998. The commission requested comments both on the proposed rule and on additional specific questions directly related to the proposed rule. Additionally, parties were encouraged to provide comments on any other relevant issues not specifically described. Comments and/or reply comments were received from 15 interested parties, including 11 utilities. Central and South West Corporation (CSW) filed comments, reply comments, and supplemental reply comments for its Texas electric utility operating companies Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company. Comments were filed by Enron Energy Services (Enron), SGS Statistical Services (SGS), and by Texas Electric Cooperatives Inc. (TEC) on behalf of its 74 electric distribution cooperatives members.

Other utilities filing comments and reply comments were El Paso Electric Company (EPE), Entergy Gulf States, Inc. (EGS), Houston Lighting and Power Company (HL&P), Southwestern Public Service Company (SPS), Texas-New Mexico Power Company (TNMP), and Texas Utilities Electric Company (TU). The commission also received comments from two municipal utilities that are not subject to the rule, City Public Service of San Antonio (CPS) and the City of Austin (Austin) that also filed reply comments. Reply comments only were received from North Star Steel, (North Star), Pedernales Electric Cooperative, Inc. (PEC), South Texas Electric Cooperative, Inc. (STEC), and East Texas Electric Cooperative, Inc. (ETEC). Following is a summary of the comments, including the commission's specific questions.

First, recognizing that different extensive interruption types may warrant different reporting requirements, parties are asked to comment whether scheduled interruptions should be reported. Should utilities state why alternatives to a scheduled interruption cannot reasonably be undertaken? Should the commission require a summary report for scheduled interruptions or should utilities only file an initial notice? What information should be provided for scheduled interruptions, and what information should not be provided?

All of the utilities agreed that the reporting of scheduled interruptions or maintenance alternatives to a scheduled interruption is not necessary. SPS and others indicated that such reporting would be burdensome and TU stated that "reporting of scheduled interruptions would unnecessarily cause resources to be redirected from service reliability efforts and restoration activities to administrative duties." EPE indicated that since the commission requires semi- annual reporting of reliability indices calculated for scheduled interruptions, the commission currently has the ability to request additional information concerning scheduled interruptions should their frequency or duration become suspect. Austin added that a utility should capture information concerning scheduled interruptions to "enhance its own ability to respond to customer outage questions."

Several utilities commented that scheduled interruptions are a normal part of doing business to ensure that the system performs as designed, and that such interruptions are scheduled with the customer and are performed at the customer's convenience, often at the customer's request due to problems or maintenance on the customer side of the meter. The commission agrees that this rule should not require the reporting of scheduled interruptions when the affected customers are notified in advance. The commission may obtain information on scheduled interruptions through its service quality report process, or by requiring additional reports as circumstances may warrant.

Second, has the commission identified the appropriate information for utilities to submit in cases of extensive and significant interruptions? Should the commission require utilities to submit information other than what the rule identifies, or has the commission identified any information that will not further the commission's ability to monitor and report on extensive interruptions? Will collecting the amount of requested information present any risk of hampering restoration efforts?

HL&P suggested that the commission adopt the reporting criteria for significant interruptions that the Department of Energy (DOE) utilizes. The DOE requires that interruptions be reported in eight specific situations, including firm customer load shedding resulting in the reduction of over 100 MW, a loss of 300 MW for more than 15 minutes, or a continuous interruption for three hours involving 50,000 customers or more. The commission believes that adopting the DOE reporting criteria is not appropriate because it would not apply to the numerous utilities that do not serve at least 50,000 customers or loads of 300 MWs.

Most utilities shared the commission's concern that the reporting of significant interruptions not interfere with the utility's restoration efforts, and TEC recommended that the commission add a provision for extensions of time for any reporting that would delay the restoration of service. The commission affirms that utilities should notify the commission 'as soon as reasonably possible after the utility has determined that a significant interruption has occurred' without interfering with the utility's efforts to restore service to its customers.

The largest utilities, HL&P and TU, indicated that the threshold of 10% of the customers or 10,000 customers for utilities that serve more than 100,000 customers would significantly increase the occurrence of reporting for the utilities, and the increase would be burdensome for the utilities and the commission. The commission agrees, and proposes to revise the threshold to 20% or more of the system's customers or 20,000 customers for utilities serving more than 200,000 customers.

North Star added that the proposed 'Summary Report' be revised to include more information concerning interruptions to interruptible customers. North Star recommended that the 'Summary Report' be filed within 24 hours of the onset of an interruption instead of within five working days of the end of the interruption. North Star also recommended that additional information concerning the interrupted load, the operating status of the utility's generation, and off-system sales and purchases be included in the 'Summary Report'. The commission agrees that this information may be important in the evaluation of utilities' compliance with interruptible tariffs, but since the intent of the present rule is to keep the agency informed during interruptions, and interruptible customers have contracted for such service, the commission believes that this level of detail is not necessary to be reported immediately.

Third, to what degree, if any, should the commission's rules require utilities to report extensive and significant interruption

information directly to local government officials? If the commission should do so, which local governmental officials should receive such information, and what procedure should the commission require utilities to follow?

Utilities indicated that they currently have procedures for making contact with local officials, and due to the differences in the form of local governments from community to community, specific procedures are not practical or appropriate. The commission believes that providing information to the public concerning interruptions is extremely important. The commission also believes that the lack of communications between utilities and the communities they serve has not been a wide-spread or significant problem in the past, and agrees that it is not necessary to prescribe such procedures at this time. The commission expects utilities to continue to develop and improve procedures for communicating with public officials.

Fourth, while the commission believes utilities should report interruptions affecting numerous customers, parties are requested to comment whether other interruptions merit the same reporting requirements. Should utilities report interruptions affecting customers with major significance to the community, even if the interruption does not affect 10% or 10,000 of the utility's customers, such as those affecting major industrial, governmental, or social locations?

TU and TNMP both suggested that the portion of the proposed rule that requires reporting of interruptions "such as those affecting major industrial, governmental, or social locations" be replaced with "resulting in significant media coverage." The holder of a Certificate of Convenience and Necessity is required to provide continuous and adequate service in its service areas, and the commission is responsible for ensuring that electric utilities furnish such service. The commission is also responsible for responding to the public concerning continuity and adequacy of service provided by certificate holders. The commission believes that it needs to know about events that affect major industrial, governmental, or social locations whether or not such interruptions may be of interest to the media.

Fifth, what information, if any, should the commission require a utility to submit as part of its emergency operations plan summary not presently required under the existing rule? Should the commission require a utility to file the entire emergency operations plan? Should the commission require utilities to conduct emergency operations plan drills and report the results? If so, how frequently should utilities conduct such drills?

Utilities suggested that no additional information needs to be included in emergency plan summaries, and that the entire plan should not be filed with the commission. Utilities indicated that the emergency plans include sensitive information such as unlisted telephone numbers, employee names, locations of sensitive facilities, and priority circuits that should not be made available to the public. Utilities urged that the current rule that requires utilities to make the entire plan available for inspection to the commission, is sufficient. The commission agrees that utilities should file only a general description of the plan.

The utilities also agreed that it is not necessary for the commission to require emergency operations plan drills, and a "one size fits all" mandate for drills would not recognize the differences in geography, weather, operating conditions, and other circumstances between utilities. The commission agrees and is not currently proposing to require emergency operations plan drills. The commission believes that utilities should regularly conduct emergency operations drills; however, the commission expects that prudent utilities should undertake such drills without the necessity of a rule.

Sixth, should the commission provide an explicit mechanism for providing an exception in cases where a particular year's reliability performance does not adequately or appropriately indicate the utility's service efforts and management quality? Most notably, should the rule address situations where the weather or other circumstances were unusually difficult to overcome and the utility's reported service quality does not accurately reflect the utility's service efforts? Further, how should the rule treat situations where the utility's performance during the 12 month period ending April 30, 1999, does not accurately reflect the utility's true service quality and therefore does not provide an adequate baseline, due to unusual weather or other conditions prevalent during that period?

Utilities and SGS all agreed that the commission should establish a mechanism to consider circumstances which do not accurately reflect the utility's actual reliability, but for the most part, the only suggestions were to wait for three to five years before establishing standards. The commission recognizes that a reliability standard established from a single 12-month period may be adversely affected by non-typical weather during that period, but also recognizes that most of the electric utilities in the state have been recording interruption data at the detail contemplated by this rule for a relatively short period.

SGS warned that "feeder-level SAIDI or SAIFI is even more prone to the influence of a single event than a system summary." TU proposed that any single event that causes more than 25% of the customer outages or customer minutes of outage on any feeder in any reporting period would be excluded from the calculations. This suggestion may be an appropriate method of evaluation for utility feeders once standards are established, but does not address the problem of setting a standard based on a 12-month period of extremely mild weather that sets the standard at a level that is unachievable during more normal periods. The commission believes that relying on inaccurate or incomplete data collected prior to the adoption of the service quality reporting form would not produce an appropriate reliability standard. On the other hand, the commission does not believe that it is reasonable to wait for another three to five years before establishing reliability standards merely because some utilities have been unwilling or unable to comply with the data collection requirements that the commission adopted over a year ago. The initial reporting period for the commission's Electric System Service Quality Report began in May 1997. As of April 30, 1999, utilities will have collected interruption data for 24 months. The commission believes that this period is adequate to initiate interim standards that will be reevaluated for the 36-month period ending April 30, 2000.

As noted in the preamble to the proposed rule, the commission does not intend to adopt requirements having the unintended consequence of requiring inefficient reliability expenditures due to adopting standards affected by abnormal operating experiences. Rather, the commission seeks to insure that all utility customers receive adequate service. Accordingly, the rule allows utilities (and others) to seek an adjustment to the required SAIFI and SAIDI standards or an exemption for specific facilities.

Seventh, recognizing that there will always be a "worst 10%" of service provided to customers and that some utilities may already have taken actions to remedy any service quality deficiencies, should the commission adopt different standards for utilities that already provide excellent service quality? If so, how should the commission determine what constitutes excellent service, and distinguish between utilities that currently provide excellent service quality and other utilities? If the commission decides to adopt different standards for utilities that provide excellent service quality, what standards should apply?

TU seemed to agree with the commission in asserting that each utility's performance "should be set as appropriate based on its past performance", but adds that utilities that "already have good reliability, such as TU, would have to extensively change their approach and procedures and increase their cost in order to comply with the proposed standard." TU urged the commission to "assume that a utility is providing adequate levels of service unless there is sufficient evidence indicating otherwise." TU also indicated a concern that the proposed rule "does not require improvement in the 'average' customer's reliability." The commission submits that for the purposes of this rulemaking, it does assume that a utility is generally providing an adequate level of service. For that reason, the commission has not included a provision in the proposed rule that requires the improvement in the service of the 'average' customer. Instead, the commission is focusing on improvements to the worst performing distribution feeders while maintaining overall system reliability.

HL&P answered that it is reasonable for the commission to adopt different standards for utilities that already provide excellent service quality. HL&P and Austin pointed out that as utilities upgrade their interruption data collection and outage analysis systems, the numbers of customers and duration of interruptions becomes more accurate and the values of the indices tend to rise (or get worse). SPS recommended a balanced plan which contains both penalties and rewards but did not make any specific proposals. The commission's responses to these comments are included in subsequent discussions.

TEC expressed concern that the application of a "rigid set of standards" would replace the "informed judgment of management". The commission suggests that the use of reliability indices in operation and maintenance planning are necessary tools for making truly 'informed' decisions. CSW responded that "it is not appropriate to approach the question as adopting 'different standards' for utilities providing excellent or inadequate service so much as a question of defining a minimum level of service for all utilities in Texas." TNMP and EPE answered that the commission should not adopt different classes of standards. EPE added that if it should do so, the standards should be tailored "to reflect each utility's specific geographical location and climate conditions." The commission believes that establishing a utility-specific standard that is based on the utility's performance in its geographical location and climatic conditions will address this concern.

Eighth, has the commission set standards at the appropriate levels? Should the commission require improvement over a different time period? Should it adopt compliance levels other than 94% and 98%? Should the commission adopt a baseline other than the service quality provided to 90% of Texas system customers? Are SAIDI and SAIFI adequate reflections of system reliability? If not, what indicators should the commission use?

CSW indicated that it does not believe that the standards in the proposed rule are appropriate, and urged that "at very least, a different timetable and way of implementing 'standards' should be considered." CSW added that what is missing is a lack of data concerning the cost and benefits of improvements made to improve system reliability. CSW urged that the indices be calculated on a 12-month basis instead of the current six months. The commission's rule evaluates the performance of each utility on an annual basis, and the commission will consider the reporting requirements after the adoption of the rule.

TNMP added that the standards for improvement are uneconomic and burdensome. EPE reiterated that the commission has not yet received sufficient information to set appropriate standards for performance and several utilities indicated that an additional three to five years of data collection will be necessary before standards should be established. Austin recommended that the commission include information such as the number of customers on a circuit, the number of outages for each cause, and the maximum and minimum lengths for each outage type. The commission agrees with Austin and believes that these factors are important tools for the evaluation of distribution feeder performance and believes that they should be considered in a revised Service Quality Report.

SPS and TU responded that the standards are unrealistic and are set at inappropriate levels. TU urged that the commission not set a "reliability standard at a level that is so high that it is impossible or very costly to meet. TU included an estimate of additional tree-trimming expense that would be necessary "using the methods described in the Commission's proposed rule." The commission expects utilities to assess the actual causes of interruptions on the worst feeders and allocate operation and maintenance budgets accordingly. If it is determined that vegetation- related outages contributed significantly to a feeder's poor performance, then it may be necessary for a utility to increase or reallocate its budget to provide needed vegetation management resources. As stated above, the commission does not intend to adopt requirements having the unintended consequence of requiring inefficient expenditures due to adopting unreasonable reliability standards. Accordingly, this section will adopt requirements for distribution feeder improvements at the 92% and 96% levels instead of the 94% and 98% levels required in the proposed rule.

TEC recommended that a utility be permitted to "exclude selected feeders from requirement if the utility files a statement with the Commission that the costs are excessive. If the Commission has reason to dispute the utility's finding, it could undertake an investigation." HL&P indicated that it will be "hard to make such a dramatic improvement in such a short time in a cost effective manner." HL&P recommended adopting this rule as a "pilot project to evaluate the effects of the standard on the balance between cost/reliability and to further refine data reporting standards." HL&P also reiterated the point that utilities that improve the process of data collection will be perceived as not meeting the standards because their indices will 'get worse' even if the actual level of service reliability remains the same. The commission recognizes that changes in data collection processes will affect the reliability indices, and the commission has included a provision in the rule that allows for utilities to request adjustments to the standards due to improvements in data acquisition systems.

Ninth, would it be appropriate to modify the standards in some limited fashion to reflect the differing characteristics that may affect a utility's ability to maintain electric service reliability? If so, should such modification be based on characteristics such as number of line miles per customer, customers served, vegetation density, average age of distribution system, Supervisory Control And Data Acquisition (SCADA) capability, or the nature of the service area (rural or urban)?

Most utilities responded as did CSW that "until consistent service quality data is available and some determination of cost and benefits of reliability is made, it is difficult to identify what types of 'modifications' (urban vs. rural, etc.) should be written into any rule." Austin commented that the differing characteristics should not be an excuse for utilities to defer making improvements in data acquisition. Austin added that "(w)ithout good data, a utility cannot identify its problem areas." EPE reiterated that the commission should not establish separate standards for each utility, but should recognize that "utility systems can be expected to perform differently given the unique characteristic of each system." SPS, TNMP, TU, and HL&P also responded that the rule should differentiate appropriate standards according to the characteristics of the system and the various conditions experienced in different geographic areas. The commission believes that establishing utility specific standards based on recent performance recognizes the different expectations and the unique characteristics of each utility and its service territory.

Tenth, how should the commission enforce the rule's reliability standards? What should be the consequences of a utility's failure to meet the standards? What actions should the commission take in the event of non-compliance with these standards? Should the commission view an overall failure to meet these standards as a single violation, or does each failure to provide the required service quality to each customer constitute a single rule violation?

CSW urged the commission to permit the "swift and certain recovery of compliance expenses" through an abbreviated proceeding. SPS recommended performance incentives instead of penalties. CSW added that an even greater incentive would be for utilities to be eligible for rate of return rewards for "service quality in excess of minimum standards". Fair and reasonable rates of return have been established that permit utilities to maintain the necessary level of service quality established in this rule. The commission believes that it is unreasonable to allow a rate increase, outside of a rate case, simply because the customer's service reliability is better than the minimum standard. Should a utility's revenues not permit it to make required improvements, it may file a general rate case under PURA.

HL&P suggested language similar to the "draft legislation that was considered during the last Legislative session." Under this proposal, the commission could order a deficient utility to provide information showing that there is no need for corrective action or that corrective action has already been taken, or a plan to implement procedures to correct any deficiency. TNMP and HL&P also recommended language from the draft bill that would have the commission order a deficient utility to increase its budgeted expenditures by up to 5% in the account applicable to the area of deficiency. TNMP added that "spending more money at particular rural feeders does not necessarily guarantee that the increase in reliability will occur." Service quality reports that utilities filed after the 1997 legislative session indicate that all utilities have some facilities that provide substantially inferior reliability when compared to the system average. The commission believes that action is required to improve service on these deficient distribution feeders. The approach outlined in the proposed legislation does not result in the needed improvements.

TU and CSW believe that any form of enforcement should apply only to overall company performance and not the performance of individual feeders. If a utility does not comply with the rule, CSW suggests that the utility be given sufficient time ... "perhaps one year" ... to comply. After that time, the commission could consider regulatory action including administrative penalties. TNMP, TEC, and EPE urged that due to the uncertainty of the interruption data, it is premature to prescribe a method of assessing penalties. Most of the utilities responded that the commission not consider each individual failure a stand-alone violation, but to consider the best efforts of the utility overall. The commission agrees with TU's recommendation that any penalties associated with this rule be considered in a rate case or in a complaint proceeding. The commission disagrees that it should focus only on overall system performance, and believes that doing so would ignore regions in which a utility may provide deficient service. The commission also disagrees that it should afford non-compliant utilities one year to remedy deficient service. Utilities must provide continuous and adequate service to all customers at all times. Utilities should focus their efforts on ensuring that service remains at acceptable levels to avoid the need to constantly remedy deficient service.

TEC recommended that if the commission "determines that a utility's failure to satisfy the rule provided that utility with a competitive advantage over a wholesale customer, the Commission should require the utility to provide service without charge until improvements are made, and subject the utility to possible administrative fines." The commission believes that this issue is outside the scope of the present rulemaking.

Eleventh, since there is no universally accepted standard for establishing Year 2000 compliance, what standard should the industry and the commission use for establishing the compliance of its computers and systems?

EPE recommended limiting the scope of this issue to "items that are mission critical" and "only those systems or processes that directly affect the customer." EPE requested a definition of the terms "critical customers and processes." CSW suggested that the appropriate standard is one of "best efforts". CSW further stated that the leadership of the commission should serve as sufficient motivation for any entity which has not made significant progress towards correcting its Y2K problems. EGS stated that the Y2K standard should be a standard set by the commission and that it should only apply to mission critical equipment. EGS added that the December 1998 deadline is too early for Y2K contingency plans. HL&P stated that each utility is "required to use prudent judgment in operating and maintaining its system, and Year 2000 readiness is just one of many components comprising such obligation." Further, HL&P stated that this is a very complex issue and apart from requiring periodic Y2K status reports it is not necessary for the commission to take further action. TU refers the commission to "the most recognized standard for Year 2000 Compliance" that has been published by the British Standards Institution Committee. TNMP, TEC, EPE, and SPS pointed out that the commission has established Project 18491 to address Year 2000 issues, and SPS added that "it would be duplicative to make Year 2000 compliance part of the continuity of service

project." TEC stated that a "standards" approach may not be appropriate and it may be better to let Y2K be treated as a stand alone project and not a subcategory of emergency operations.

The commission believes that the Y2K issue is highly technical. At this time, it would not be productive for the commission to attempt to establish standards for Y2K compliance. Such standards already exist and the commission believes that regulated utilities clearly understand their obligation to provide safe and reliable service. The commission believes that its role should be to provide motivation and leadership to the regulated utilities and monitor their progress on this issue; however, utilities should be prepared to establish an interruption cause code to record the number and the duration of interruptions associated with Year 2000 outages. A draft emergency operations plan related to Year 2000 shall be filed by December 31, 1998, and a final version by June 30, 1999 to comply with Contingency Planning Schedule issued by the North American Electric Reliability Council.

Twelfth, should the commission require utilities to regularly update critical load registries as part of emergency operations planning? If so, with what frequency should utilities update these registries?

EPE and HL&P responded that it is reasonable to require utilities to update their registries of critical loads on an annual basis. HL&P indicated that the registry is an operational document and need not be filed with the commission. EPE indicated that it is not opposed to submitting the registry. HL&P stated that a registry should be prepared and an annual update prior to the storm season is not unreasonable but that it should not be included in the emergency plan. TNMP described the registry as containing confidential and proprietary information that should not be made public. SPS, TU, and CSW responded that it is not appropriate to require annual updates, because the utilities regularly update the registry as necessary. CSW commented that the rule should clearly state that it is the responsibility of the customer to notify the utility when the customer should be placed on the critical load registry and when it is appropriate to change the registry.

The commission believes that critical load registries should be updated as necessary but no less than annually. Further, the commission believes that customers may not be aware that critical load registries exist and therefore, it is the duty of the utility to ensure that customers are aware of the registry and of the specific steps necessary to be listed as a critical load. It is not the intention of the commission to require the actual registry to be filed with the commission. The commission will require utilities to file information regarding: 1) the location of the registry, 2) how the utility ensures that it is maintaining an accurate registry, 3) how the utility will provide assistance to critical load customers in the event of an unplanned outage, 4) how the utility intends to communicate with the critical load customers, and 5) how the utility is training its staff with respect to critical loads.

Thirteenth, the rule contemplates that utilities will implement system reliability improvements over a two year period, but contains no mechanism for revising the baseline reliability standards when this process concludes. How should the commission adjust the basic reliability standards after April 30, 2001, if at all? When should the commission revise the reliability standards set forth in this proposed rule?

CSW stated that it is premature to worry about adjustments in 2001 when it is inappropriate to set a baseline now. EPE recommended that the commission should refrain from establishing firm quantified performance standards until utilities have been able to compile more extensive data concerning system performance..."perhaps June 15, 2000." TNMP further urged the commission to rely, until then, on the reporting requirements of §23.11(i) (now §25.81). CSW recommended a 'phase-in' of standards over three years and then the commission should review the standards annually. SPS responded that the rule should have a 'built-in' review process to evaluate the economic effectiveness of the rule. EPE suggested that the standards be reviewed on a "periodic basis (e.g. every three years)." TU recommended that the commission consider each utility individually, and argued that some utilities may require improvements for several years and others may require few, if any, improvements. Austin agreed with this position and added that the commission should "work closely with each utility to revise the standards according to the utility's ability to collect accurate data." HL&P reiterated that the rule should be operated as a 'pilot project', and HL&P, TEC, and TNMP all urged that the entire rule be reevaluated in 2001. The commission concludes that the standards should be established on an interim basis in 1999 and reevaluated in 2000 after additional reliability data have been collected and analyzed.

Finally, in order to implement the proposed rule's reliability provisions, what changes are required to the service quality report form or the reporting process? How frequently should the commission require utilities to submit performance data for every distribution feeder in its Texas system? How frequently should the commission require utilities to report the number of customers each distribution feeder serves?

HL&P responded that the current requirement for reporting the 5% of the system's distribution feeders with the highest index values is sufficient to ensure improvements in service reliability without the present rulemaking. CSW suggested that the commission "drop the scheduled transmission interruption reporting requirements and transmission interruptions that do not result in customer outages." The commission submits that the current reporting requirements only apply to outages that ultimately interrupt service to a customer, and agrees that the requirement to report scheduled interruptions should be reconsidered. The commission will request additional comments on the revision of the Service Quality Report Form after adoption of the present rule.

CSW recommended that SAIFI be calculated on a 12-month rolling basis (not the current six months), and that all other measures be dropped. CSW clarified this position in reply comments, stating that "it is easier to prevent an outage altogether than to attempt to control the duration of an outage." The commission agrees that if a customer has no interruptions that the duration index is not meaningful; however, the total duration of interruptions to a customer (even if it is only one interruption) is an important factor in evaluating the performance of the utility. These calculations, along with an analysis of the causes of the interruptions, will provide the utility with valuable information concerning the performance of the distribution system. For reporting purposes, the commission agrees that a 12-month average may be a better indicator of overall system performance than an index calculated for a six-month period.

TU and HL&P suggested that the reporting process should be once a year instead of twice. SPS and HL&P added that a

requirement to report on each circuit would be excessive and burdensome. TU indicated that reporting the performance of each feeder is simply not necessary to meet the requirements of the proposed rule. Austin suggested that the only way to enforce compliance with the proposed rule is to require that all distribution feeders be reported to the commission. Austin added that "feeder length, feeder maximum load, previous reporting period's indices and previous reporting period's number of outages are also excellent pieces of data to review." SPS added that "the paper required to report this information would be voluminous." According to the filings of the Service Quality Report, all of the feeders of SPS could be listed on fewer than a dozen pages, and even the utility with the greatest number of distribution feeders would only require approximately 50 pages to list all of its feeders. Considering that utilities must calculate the indices for all feeders in order to report the 5% with the highest values, and the likelihood that the filing will be made electronically, increasing the number of rows on a spreadsheet should not impose an undue burden on any utility.

CSW recommended that the performance data for distribution feeders (5% with highest values) continue to be filed twice annually and, along with SGS, the number of customers should be estimated annually. EPE agreed to file performance data for every distribution feeder annually, but reminds the commission that the number of customers for each feeder of the EPE system is estimated. The commission submits that without knowing the performance of all of a utility's feeders, the commission cannot completely evaluate the performance of the entire system.

HL&P included a set of questions designed to determine the extent to which a utility is capable of capturing accurate data during an interruption specifically, the number of customers affected by an interruption. SGS also suggested that the commission request this type of information. HL&P reiterated that as utilities improve their ability to capture accurate interruption data, the indices will likely be significantly higher (or worse), creating an inaccurate impression that reliability is declining. HL&P further warned that this situation may provide a disincentive for a utility to upgrade its reporting capabilities. The commission recognizes that refinements in the acquisition of interruption data and improvements in customer information systems may adversely affect the reliability indices and create the impression that service quality has declined. The commission does not intend to create such a disincentive, and in fact would encourage utilities to make reasonable expenditures to install or upgrade systems that improve system control and result in more accurate acquisition of data. To avoid this possibility, the rule is changed to allow an adjustment to the standard in the event the utility improves its data acquisition systems.

CSW, HL&P, and TU suggested alternate proposals to accomplish the reliability objectives of the present rule, and the proposals were discussed at the public hearing. The public hearing, held on August 13, 1998, was attended by approximately 40 persons representing 14 entities. All of the alternate proposals presented at the public hearing suggested that the commission adopt system-wide SAIFI and SAIDI standards based on a 36-month rolling average to be evaluated annually. TU and HL&P suggested that the 36-month average begin on April 30, 1999, and EPE added that utilities should be able to request adjustments to the standards if 36 months of data is not available. CSW recommended that the 36-month average be 'phased in' with interim standards set on 12 months, 24 months, and then 36 months of data. Under the CSW proposal, the initial 12-month period would end April 30, 1999 and the 36-month period would end April 30, 2001. From that date forward, CSW suggested that the standards would be raised (requiring better reliability) if the rolling 36-month is better than the then-existing standard.

HL&P, TU, and CSW proposed that utilities maintain system-wide SAIDI and SAIFI values within 105% of the standards. The CSW proposal included an additional reporting requirement in the event a utility exceeded 105% of the standard. The utility would report to the commission the causes for the variation and would report quarterly or semi-annually on corrective action taken until the rolling average returns to within 105% of the standard. CSW clarified its position in supplemental reply comments filed September 9, 1998. CSW indicated that its proposal does not require 36 months of data before the proposed rule could be implemented. CSW added that "(o)nly the provision for resetting either the system SAIFI or SAIDI standard to a lower (better) number requires a minimum of 36 months of data." The commission believes a modified version of the CSW proposal would address the portion of the commission's objective of maintaining or gradually improving overall system performance. Accordingly, the commission adopts provisions in the rule that establish system-wide reliability standards and allow a 'phase-in' by adopting interim standards in 1999.

The other facet of the commission's objective is to improve the performance of the poorest performing distribution feeders. The commission's published rule proposed selecting the feeders to be improved based on the percentage of customers served by the feeders with the highest SAIFI and SAIDI index values. The alternate proposals presented by utilities suggested several different ways to identify the poorest performing distribution feeders. Instead of the commission's proposed feeder standard at 90% of the system's meters with the best reliability (90th percentile), HL&P recommended setting the standard at the system average for SAIFI and SAIDI plus three standard deviations. TU recommended setting a SAIFI and SAIDI standard at the greater of the 90th percentile or system average times four.

Both HL&P and TU recommended retaining the provision for improvements so that feeders serving 94% of the customers in 2000 and 98% of the customers in 2001 are as reliable as the feeders serving 90% of the customers in 1999. The CSW proposal would require utilities to address the needs of the top 5.0% worst performing feeders using only SAIFI. CSW suggested that selecting a specific percentage of the system's distribution feeders, as is currently required by the commission's semi-annual Service Quality Report, will make it easier for utilities to comply, and may begin immediately. CSW added that it "strongly believes that a minimum of 36 months of data is required should the commission adopt any proposal which uses a manipulation of either system SAIFI or SAIDI, including use of standard deviations, a multiple of index average, or an index percentile."

In an effort to quantify the proposals, the commission requested that the utilities file reply comments indicating the SAIFI values at the system average, the 90th percentile, four times system average, and three standard deviations from the system average. The commission also requested the percentage of feeders (or meters) at these levels. HL&P's proposal of system average plus three standard deviations would result in a range of SAIFI standards from 1.5 to 7.6 and 92.6% to 99.6% of utility feeders would meet the standard. TU's proposal of system average

times four would result in a range of SAIFI standards from 1.5 to 7.3 and 90.1% to 99.6% of utility feeders would meet the standard. The commission's proposal of using the 90th percentile would result in a range of SAIFI standards from 1.1 to 4.1 and, of course, 90% of the meters and approximately 90% of the feeders would meet the standard. The commission's proposal (and the terms included in HL&P's and TU's proposal) would require utilities to improve reliability so that feeders serving 98% of the meters meet the standard by April 30, 2001. Under the proposals made by HL&P and TU, almost all utilities would already meet the 2001 requirement and virtually no improvements would be required.

The commission submits that in light of the levels of service shown in the service quality reports, establishing a standard so low that most utilities already comply is not meaningful and does not further the objective of improving the record of the poorest performing distribution feeders. The commission is not inclined to adopt the alternate proposals of using the system average times four or the system average plus three standard deviations for the evaluation of feeder performance. The commission agrees that selecting the feeders based on a simple percentage, as currently required by the commission's Service Quality reporting form, is preferable to using the 90th percentile. Accordingly, the commission adopts a modified version of the CSW proposal.

The commission believes that it is important to focus on a significant percentage of the system in order to effect improvements to the worst performing feeders. SAIFI and SAIDI standards will be established at the values represented by the 10% of feeders with the highest values in the 24-month period ending April 30, 1999, (reported June 15, 1999). This '10% feeder standard' may be reevaluated based on the 36-month period ending April 30, 2000 (reported June 15, 2000), and may be adjusted by the commission for unusual weather or when improvements are made to data acquisition systems. Improvements shall be required so that 92% of the feeders comply with the 1999 10% feeder standard as of April 30, 2000, and 96% of the feeders comply as of April 30, 2001. Additionally, utilities will be required to operate the distribution system so that no feeder sustains a 12-month SAIFI or SAIDI value that is among the highest (worst) 2.0% in consecutive years.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.003 which grants the commission powers relating to reports; §14.151 which grants the commission the authority to prescribe the form of records to be kept by a utility; §14.153 which requires the commission to adopt rules governing communications with the commission; §31.001 and §32.001 which require the commission to regulate electric utility operations and services; §37.151 which requires certificate holders to provide continuous and adequate service in their service areas; §38.001 which requires electric utilities to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §38.002 which grants the commission authority to adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow, and to adopt adequate and reasonable standards for measuring a condition, including quantity, quality, pressure, and initial voltage, relating to the furnishing of a service; and §38.071 which grants the commission authority to order an electric utility to provide specified improvements in its service in a specified area if requiring the company to provide the improved service is reasonable.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.151, 14.153 31.001, 32.001, 37.151, 38.001, 38.002 and 38.071.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities providing distribution or transmission service in Texas.

(b) General.

(1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service entities on a temporary basis until normal service to these agencies can be restored.

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

(1) Critical loads - Loads for which electric service is considered crucial for the protection or maintenance of public safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(2) Interruption classifications:

(A) Forced - Interruptions, exclusive of major events, that result from conditions directly associated with a component requiring that it be taken out of service immediately, either automatically or manually, or an interruption caused by improper operation of equipment or human error.

(B) Scheduled - Interruptions, exclusive of major events, that result when a component is deliberately taken out of service at a selected time for purposes of construction, preventative maintenance, or repair. If it is possible to defer an interruption, the interruption is considered a scheduled interruption.

(C) Outside causes - Interruptions, exclusive of major events, that are caused by outside influences such as generation, transmission, or substation outages. (Non-distribution system causes)

(D) Major events - Interruptions that result from a catastrophic event that exceeds the design limits of the electric power system, such as an earthquake or an extreme storm. These events shall include situations where there is a loss of power to 10% or more of the customers in a region over a 24 hour period and with all customers not restored within 24 hours.

(3) Interruption, momentary - Single operation of an interrupting device which results in a voltage zero.

(4) Interruption, sustained - All interruptions not classified as momentary.

(5) Interruptions, significant - All interruptions of any classification lasting one hour or more and affecting the entire system, a major division of the system, a community, a critical load, service to interruptible customers, scheduled interruptions lasting more than four hours that affect customers that are not notified in advance, 20% or more of the system's customers, or 20,000 customers for utilities serving more than 200,000 customers. Significant interruptions also include interruptions adversely affecting a community such as interruptions of governmental agencies, military bases, universities and schools, major retail centers, and major employers.

(6) Reliability indices:

(A) System Average Interruption Frequency Index (SAIFI) - The average number of times that a customer's service is interrupted. SAIFI is calculated by summing 'the number of customers interrupted for each event' and dividing by 'the total number of customers' on the system being indexed. A lower SAIFI value represents a higher level of service reliability.

(B) System Average Interruption Duration Index (SAIDI) - The average amount of time a customer's service is interrupted during the reporting period. SAIDI is calculated by summing 'the restoration time for each interruption event' times 'the number of customers interrupted for each event', and dividing by 'the total number of customers'. SAIDI is expressed in minutes or hours. A lower SAIDI value represents a higher level of service reliability.

(7) Year 2000 compliant - A computer system or application that accurately processes date/time data (including but not limited to calculating, comparing, and sequencing) from, into, and between the 20th and 21st centuries, the years 1999 and 2000, and leap year calculations, and performs its intended applications accurately and without interruptions.

(8) Year 2000 ready - A computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully year 2000 compliant.

(d) Record of interruption. Each utility shall keep complete records of sustained interruptions of all classifications. Where possible, each utility shall keep a complete record of all momentary interruptions. These records shall show the type of interruption, the cause for the interruption, the date and time of the interruption, the duration of the interruption, the number of customers interrupted, the substation identifier, and the transmission line or distribution feeder identifier. In cases of emergency interruptions, the remedy and steps taken to prevent recurrence shall also be recorded. Beginning July 1, 1997, each utility shall retain records of interruptions for five years.

(e) Notice of significant interruptions.

(1) Initial notice. An electric utility shall notify the commission, in a method prescribed by the commission, as soon as reasonably possible after it has determined that an significant interruption has occurred. The initial notice shall include the general location of the significant interruption, the approximate number of customers affected, the cause if known, the time of the event, and the estimated time of full restoration. The initial notice shall also include the name and telephone number of the utility contact person, and shall indicate whether local authorities and media are aware of the event. If the duration of the significant interruption is greater than 24 hours, the utility shall update this information daily and file a summary report.

(2) Summary report. Within five working days after the end of a significant interruption lasting more than 24 hours, the utility shall submit a summary report to the commission. The summary report shall include the date and time of the significant interruption; the date and time of full restoration; the cause of the interruption, the location, substation and feeder identifiers of all affected facilities; the total number of customers affected; the dates, times, and numbers of customers affected by partial or step restoration; and the total number of customer-minutes of the significant interruption (sum of the interruption durations times the number of customers affected).

(f) Emergency Operations Plan. By December 31, 1998, each utility shall file with the commission a general description of its emergency operations plan. Each utility shall update its plan by filing a revised description that clearly indicates any changes in the plan at least 30 days before such changes take effect. A general description of the plan shall also be made available at the utility's main office for inspection by the public. A complete copy of the plan shall be made available at the utility's main office for inspection by the commission or its staff upon request. Each electric utility's emergency plan must include, but need not be limited to, the following:

(1) A registry of critical loads directly served by the utility. This registry shall be updated as necessary but not less often than annually. The description filed with the commission shall include the location of the registry, how the utility ensures that it is maintaining an accurate registry, how the utility will provide assistance to critical load customers in the event of an unplanned outage, how the utility intends to communicate with the critical load customers, and how the utility is training its staff with respect to serving critical customers and loads.

(2) A communications plan that describes the procedures for contacting the media and customers and critical loads directly served by the utility as soon as reasonably possible either before or at the onset of an electrical emergency. The communications plan should also address how the utility's telephone system and complaint handling procedures will be augmented during an emergency. Utilities should make every reasonable effort to solicit help from cogenerators and independent power producers during times of generation shortages to prevent interruptions in service;

(3) curtailment priorities and procedures for shedding load and rotating black-outs;

(4) priorities for restoration of service;

(5) a summary of power plant weatherization plans and procedures;

(6) a summary of the utility's alternative fuel and storage capacity;

(7) a draft of the utility's "Year-2000" contingency plan and mitigation strategies for dealing with potential failures caused by computers that are not year 2000 ready or year 2000 compliant shall be filed by December 31, 1998. A final version shall be filed no later than June 30, 1999. This plan shall identify potentially vulnerable systems and business processes and prioritize them. The plan shall also include the utility's plans for backups for its customers' critical loads and processes, and report estimated costs for contingency operations.

(g) System reliability. Reliability standards shall apply to each electric utility, and shall be limited to the Texas jurisdiction. The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. A

"reporting year" is the 12-month period beginning May 1st and ending April 30th of each year.

(1) System-wide standards. Interim standards shall be established for the 24-month period ending April 30, 1999. The interim standards shall be the system-wide average of the 1998 and the 1999 reporting years for each reliability index. The interim standards will be adjusted based on the 36-month period ending April 30, 2000. The resulting standards will be the average of the three reporting years 1998, 1999, and 2000.

(A) SAIFI. Each utility shall maintain and operate its electric distribution system so that the SAIFI value for the 2000 reporting year does not exceed the interim system-wide SAIFI standard by more than 10%. For the 2001 reporting year and thereafter, the SAIFI value shall not exceed the system- wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility shall maintain and operate its electric distribution system so that the SAIDI value for the 2000 reporting year does not exceed the interim system-wide SAIDI standard by more than 10%. For the 2001 reporting year and thereafter, the SAIDI value shall not exceed the system- wide SAIDI standard by more than 5.0%.

(2) Distribution feeder standards. Standards shall be established for the 24-month period ending April 30, 1999. The standards shall be average of the 1998 and the 1999 reporting years for each index at the value represented by the 10% of the distribution feeders with the highest values.

(A) SAIFI. Each utility shall maintain and operate its electric distribution system so that 92% of the distribution feeders meet or exceed the SAIFI standard for the 2000 reporting year. For the 2001 reporting year and thereafter, 96% of the distribution feeders shall meet or exceed the SAIFI standard.

(B) SAIDI. Each utility shall maintain and operate its electric distribution system so that 92% of the distribution feeders meet or exceed the SAIDI standard for the 2000 reporting year. For the 2001 reporting year and thereafter, 96% of the distribution feeders shall meet or exceed the SAIDI standard.

(C) Each utility shall manage its distribution feeders so that no distribution feeder shall sustain 12-month SAIDI or SAIFI values that are among the highest (worst) 2.0% of that utility's feeders for two or more consecutive reporting years. Distribution feeder performance shall comply with this provision no later than April 30, 2000.

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

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Rhonda Dempsey
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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter C. Quality of Service

16 TAC §26.51

The Public Utility Commission of Texas (PUC) adopts new §26.51 relating to Continuity of Service with changes to the proposed text as published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6119). The rule will establish service interruption recording and reporting guidelines for local exchange companies, as defined in §26.5 of this title (relating to Definitions). This new section was adopted under Project Number 19199.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested specific comments on the §167 requirement as to whether the reason for adopting or readopting the rule continues to exist. No comments were received regarding the §167 requirement. The commission finds that the reason for adopting the rule continues to exist.

The commission received written comments on the proposed new section from AT&T Communications of the Southwest, Inc. and from Southwestern Bell Telephone Company on July 13, 1998.

AT&T commented that a holder of a Certificate of Operating Authority (COA), in the provision of services through resale or the use of unbundled network elements (UNEs), must rely on underlying carriers' compliance with commission standards to meet quality of service requirements. AT&T, suggesting that this dependence should be reflected in the rule, proposed language such that the rule would primarily apply to underlying carriers. Although the commission agrees that, in certain instances, non facilities-based carriers depend on underlying carriers to meet the commission's continuity of service requirements, the commission does not agree that the rule should only apply to facilities-based carriers. As stated by AT&T, non facilities-based carriers must work together to provide continuity of service. The commission declines to modify the rule. Instead, the commission suggests that COA holders relying upon underlying carriers to provide services may so indicate in their compliance filing.

AT&T further objected to the inclusion of certain portions of subsection (f) in this section as they pertain to COA holders. Subsection (f), which governs changes in character of service, requires the utility to notify all affected customers in case any

change is made by the utility in the type of service rendered which would adversely affect the efficiency of operation or the adjustment of customers' equipment. Subsection (f) further states that adjustments or replacements to a utility's standard equipment must be made without charge to customers, or in lieu of such adjustments or replacements, by cash or credit allowances. AT&T stressed that, because the commission lacks authority with regards to COA holders, it cannot require adjustments to be made without charge to the customer or require cash or credit allowances in lieu of adjustments. The commission agrees and has amended the rule accordingly.

Finally, AT&T commented that compliance with the proposed requirement to file an emergency operations plan that includes the carrier's "Year-2000" contingency plan may require the carrier to supply information that includes proprietary information or trade secrets. AT&T stated that the rule should allow a means by which carriers can provide information without having to divulge such proprietary or confidential information to competitors. AT&T suggested that carriers be allowed to delete proprietary information from the plan that is filed with the commission. According to AT&T, the complete plan, including any proprietary information, could be made available at the carrier's main office for inspection by the commission. The commission rejects AT&T's suggestion that the only complete copy of a carrier's emergency operations plan should be made available at the carrier's main office. The commission does not anticipate that the filing of confidential or proprietary information is necessary to comply with the rule. In addition, any equipment that is interconnected with the public switched network has the potential to fail and/or have a cascading effect on other interconnected equipment. For this reason, it is in the public interest to have this information filed publicly with the commission.

SWBT's comments, which did not suggest any revisions, simply outlined its support for, and intent to comply with, the rule.

All comments, including any not specifically referenced herein, were fully considered by the commission.

In adopting this section, the commission makes a modification for the purpose of clarifying the intent expressed in the preamble to the proposed rule, which states that the commission intends for customers served by both holders of CCNs (certificates of convenience and necessity) and COAs to benefit from the expanded scope of the section. Specifically, the term "dominant carriers" is deleted from subsection (a) because that term is also encompassed under the remaining term, "local exchange companies."

In addition, the commission added the initial date, December 31, 1998, by which each local exchange company shall file its emergency operations plan with the commission.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

§26.51. Continuity of Service.

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to local exchange companies as defined in §26.5 of this title (relating to Definitions).

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

(1) Year 2000 compliant - A computer system or application that accurately processes date/time data (including but not limited to calculating, comparing, and sequencing) from, into, and between the 20th and 21st centuries, the years 1999 and 2000, and leap year calculations, and performs its tasks effectively without any date-related interruptions.

(2) Year 2000 ready - A computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully year 2000 compliant.

(c) Service interruptions.

(1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to handle emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, deliberately interrupt service to selected customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(d) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(e) Report to commission. The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption. Utilities should use judgment in reporting major outages lasting less than four hours. Utilities shall notify the commission in writing of interruptions in service lasting four or more hours affecting:

(1) 50% of the toll circuits serving an exchange;

(2) 50% of the extended area service circuits serving an exchange;

(3) 50% of a central office; and

(4) 20% or more of an exchange's access lines.

(f) Change in character of service.

(1) In case any change is made by the utility in the type of service rendered which would adversely affect the efficiency of operation or the adjustment of the equipment of customers, all customers who may be affected shall be notified by the utility at least 60 days in advance of the change or if such notice is not possible, as early as feasible.

(2) This paragraph applies only to local exchange companies that are dominant carriers. Where adjustments or replacements of a dominant carrier's standard equipment must be made to permit use under such changed conditions, adjustment shall be made by the dominant carrier without charge to the customers, or in lieu of such adjustments or replacements, the dominant carrier may make cash or credit allowances based on the duration of the change and the degree of efficiency loss.

(g) Emergency Operations Plan. By December 31, 1998, or within 60 days of becoming a utility, whichever is later, each utility shall file with the commission a general description of its emergency operations plan. Each utility shall thereafter update its plan by filing revision sheets that clearly indicate any changes in the plan within 30 days of such changes. A general description of the plan shall also be made available at the utility's main office for inspection by the public. A complete copy of the plan shall be made available at the utility's main office for inspection by the commission or its staff upon request. Each emergency plan filed by a utility must include, but need not be limited to, the following:

(1) a communications plan that describes the procedures for contacting the media, customers and critical users (including but not limited to hospitals, police stations, fire stations, and critical city offices) as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:

(A) address how the utility's telephone system and complaint handling procedures will be augmented during an emergency;

(B) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;

(2) priorities for restoration of service; and

(3) the utility's Year 2000 contingency plan and mitigation strategies for dealing with potential failures caused by computers that are not year 2000 compliant or year 2000 ready, whether those failures originate in the utility's own system or in a network partner or supplier's system or operations. This plan should identify potentially vulnerable systems and business processes and prioritize them. The plan should also include the utility's plans for backups for critical users and processes, and report estimated costs for contingency operations.

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

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Subchapter D. Records, Reports and Other Required Information

16 TAC §26.88

The Public Utility Commission of Texas (PUC) adopts new §26.88 relating to Traffic Usage Studies with no changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9223) and will not be republished. This section is necessary to enable the commission to ensure that dominant certificated telecommunications utilities (DCTUs) have adequate data that is required to calculate the grade of service as related to trunking facilities. This section replaces §23.61(g) of this title (relating to Telephone Utilities) as it pertains to traffic usage studies. This section is adopted under Project Number 17709.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. Section 23.61 will be repealed once all subsections have been moved to Chapter 26.

The commission requested specific comments on the §167 requirement as to whether the reason for adopting §23.61(g) continues to exist in adopting §26.88. The commission received no comments on the proposed section. The commission finds that the reason for adopting the rule continues to exist.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

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16 TAC §26.89

The Public Utility Commission of Texas (PUC) adopts new §26.89 relating to Information Regarding Rates and Services of Nondominant Carriers with no changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9224) and will not be republished. This section is necessary to enable the commission to monitor the types of services provided by nondominant carriers and the rates charged for those services. This section replaces §23.61(j) of this title (relating to Telephone Utilities) as it pertains to information regarding rates and services of nondominant carriers. This section is adopted under Project Number 17709.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. Section 23.61 will be repealed once all subsections have been moved to Chapter 26.

The commission requested specific comments on the §167 requirement as to whether the reason for adopting §23.61(j) continues to exist in adopting §26.89. The commission received no comments on the proposed section. The commission finds that the reason for adopting the rule continues to exist.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

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Subchapter E. Certification, Licensing and Registration

16 TAC §26.107

The Public Utility Commission of Texas (PUC) adopts new §26.107 relating to Registration of Nondominant Telecommunications Carriers with no changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9225) and will not be republished. This section is necessary to enable the commission to monitor nondominant carriers providing telecommunications service in the State of Texas. This section replaces §23.61(i) of this title (relating to Telephone Utilities) as it pertains to registration of nondominant telecommunications carriers. This section is adopted under Project Number 17709.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) 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). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. Section 23.61 will be repealed once all subsections have been moved to Chapter 26.

The commission requested specific comments on the §167 requirement as to whether the reason for adopting §23.61(i) continues to exist in adopting §26.107. The commission received no comments on the proposed section. The commission finds that the reason for adopting the rule continues to exist.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

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 16, 1998.

TRD-9817554
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 6, 1998
Proposal publication date: September 11, 1998

For further information, please call: (512) 936–7308

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Distance Learning for Public Colleges and Universities

19 TAC §§5.151–5.159

The Texas Higher Education Coordinating Board adopts the repeal of §§5.151-5.159 concerning Approval of Distance Learning for Public Colleges and Universities without changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8799).

The repeal of the rules will provide guidance to all Texas public institutions of higher education in the delivery of distance learning courses and programs. The repeal of rules would retain the Board's ultimate authority over the delivery of courses and programs and would require accurate reporting of all activities by the location of the students receiving instruction.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under Texas Education Code, Sections 61.051(j) and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

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 12, 1998.

TRD-9817480

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: December 2, 1998

Proposal publication date: August 28, 1998

For further information, please call: (512) 483–6162

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19 TAC §§5.151–5.161

The Texas Higher Education Coordinating Board adopts new §§5.151-5.161 concerning Approval of Distance Learning for Public Colleges and Universities with changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8800).

The new rules will provide guidance to all Texas public institutions of higher education in the delivery of distance learning courses and programs. The new rules would retain the Board's ultimate authority over the delivery of courses and programs and would require accurate reporting of all activities by the location of the students receiving instruction.

Comments were received from: four community colleges (Frank Phillips College, Tyler Junior College, Kilgore College, Austin Community College (ACC)); Texas State Technical College-Waco (TSTC-Waco); 5 universities or systems (University of Houston (UH), Texas A&M University (TAMU), The University of Texas-Brownsville (UTB), The University of Texas at El Paso (UTEP), The University of Texas of the Permian Basin (UTPB), and The University of Texas System); four health-related institutions (The University of Texas Medical Branch-Galveston (UTMBG), The University of Texas MD Anderson Cancer Center, The University of Texas Health Science Center-Houston (UTHSCH), The University of Texas Health Science Center at San Antonio (UTHSCSA)) and the Independent College and University of Texas association. The responses contained some very helpful comments. Many of them also posed numerous questions about implementation of the rules that will not be directly addressed in this summary. Some misunderstood the kinds of courses were being addressed or regulated by specific sections and therefore sent comments that are not directly applicable.

Comments on Definitions (§5.152): The definitions section elicited the most comments. Every respondent suggested refining certain definitions and terminologies. The use of the term "live" instruction was often mentioned and confusion cause by inconsistent usage of the term "distance education" was frequently cited. These problems extended beyond the definitions section to portions of the rest of Subchapter H. UTPB suggested that synchronously-delivered courses not be considered distance education.

Response: The term "live" was replaced throughout the Subchapter and irregularities cause by inconsistent usage of the "distance education" were rectified.

Comments on Certification (§5.153): UTHSCSA suggested that the rules mentioned that existing Institutional Plans would be "grandfathered" in. The UT System mentioned specifying a five-year cycle for review of Institutional Plans and TAMU wondered about the timing of reviews.

Response: No change was made to the proposed rules, but existing Institutional Plans are considered valid. No specific review cycle for Institutional Plans was added to the Rule. This will be included in Procedures associated with implementation of Subchapter H.

Comments on General Provisions (§5.154): Frank Phillips College states that subsections (g)-(k) would be burdens on colleges. TSTC-Waco noted that technical colleges were not included in the institutions affected by this section. UH and The UT System suggested that more specificity be included in subsection (g)(2) to state what conditions would trigger the need for prior approval of courses and programs. UTMBG expressed a similar opinion and asserted that the vagueness of the statement might cause unfair treatment of certain programs. ACC thought no annual Instructional Plans should be required for off-campus courses in a community college's service area. Kilgore College and TAMU wondered about subsection (e)'s applicability to internet programs. TAMU and the UT System questioned whether subsection (g)'s references to approval by governing board would require a governing board, rather than a system's administration, to approve. The UT System objected to the withholding of formula funding for incorrect reporting covered in subsection (f). UTHSCSA wondered if support was not required for on-campus students taking distance education

courses. Several institutions had questions about the meaning of various sections: subsection (e) (Kilgore C); subsection (f) (UTHSCSA); subsection (g) (Kilgore C); subsection (i) (UH); subsection (j) (UTMBG).

Response: Wording was changed to include technical colleges. Subsection (e)'s wording ("except to individual students") would include internet courses which were deregulated by the Legislature during the 75th Session.

Comments on Standards and Criteria for Distance Education and Off-Campus Instruction (§5.155): UH feels the list of criteria in this section would cause confusion, and specifically suggested removing the reference to "graduate faculty" since many institutions do not make this distinction. UTMBG had a similar concern about identifying the graduate faculty. UTHSCSA suggested that this section be replaced with a statement that the standards and criteria should be the same as for on-campus courses. One unit of the UTHSCH offered that distance education was a method of delivery, not a curriculum, and that the provisions in this section were unnecessarily complex.

Response: This section was reorganized slightly and some modifications made in response to the comments. The reference to graduate faculty was retained to differentiate faculty who are qualified under SACS guidelines to teach in graduate programs and those who are not.

Comments on Institutional Plan for Distance Education (§5.156): UH noted that some of the Institutional Plan categories were applicable to off-campus courses while others applied to non-face-to-face courses and that these should be distinguished from one another. UH also suggested the elimination of subsections (a)(9), (10), (11), (14) and (20) as redundant or impossible. TAMU thought the list of 25 items was too detailed for an Annual Plan requirement. Tyler JC commented that institutions would have no way of knowing if students made use of appropriate technology. UTHSCSA submitted a similar comment. The UT System offered a revision of this section, which grouped items by topics.

Response: This section was reorganized and revised along the lines suggested by The UT System. Some items were removed, and others were reworded for clarity. These 25 items were never intended to be addressed in an institution's annual Instructional Plan.

Comments on Off-Campus Instruction Plan (§5.157): UH asked that the procedure for acquiring an exemption for the type off-campus courses mentioned in this section be included. The Independent Colleges and Universities of Texas representatives commented that retention of the Regional Councils was a prudent middle ground that would mitigate conflicts. UTB express concern that entrenched powers at the Regional Councils would prevent some institutions from offering some courses. UTB elaborated that if course were approved for on-campus delivery, separate approval for offering them via distance education seemed unnecessary. UTHSCH commented that peer review causes approval delays. UTMBG noted that the Regional Council is cumbersome.

Response: The CB will issue procedures to inform institutions how to comply with all the provisions of this Subchapter. The Regional Councils were retained as a mechanism for handling and, hopefully, resolving conflicts between institutions offering off-campus courses. UTMBG does not offer lower-division courses and has probably not had occasion to utilize the Regional Councils.

Comments on Procedures for Review and Approval of Lower-Division Off-Campus Instruction (§5.158): Kilgore College wrote voicing concerns about the operation of Regional Councils, from their organization to their decision- making processes. UTHSCSA's response indicated a misunderstanding of who this section applies to.

Response: The Regional Council concept had supporters and detractors. Their retention for off-campus courses was considered a middle ground position.

Comments on Procedures for Review and Approval of Upper-Level and Graduate Off-Campus Instruction (§5.159): UTHSCSA mentioned that students from around the world would want to enroll in its classes and notifying all "potentially-affected institutions" would be impossible.

Response: This section only applies to courses in which the instructor travels to an off-campus site and the instructor and the students are in the same location.

Comments on Approval of State-Funded Out-of-State and Foreign Courses (§5.160): TSTC-Waco expressed the opinion that this section would have a negative impact on the ability of Texas institutions to offer out-of-state credit courses. UH asked that the forms to apply for Commissioner's approval be included in the rules. UTHSCSA commented that students who are admitted and are paying fees, but live in foreign countries, ought to counted for formula funding, but need not have access to financial aid. UTEP indicated that prior approval of these courses is anachronistic, in a time when distance education is evolving rapidly and institutions need to be poised to become international in their scope.

Response: Forms are not included in rules because they are too specific and need flexibility to be changed. This section will receive further scrutiny from the Distance Education Advisory Committee.

Comments on Non-State-Funded Out-of-State and Foreign Courses (§5.161): UH requested clarification of the term "in-state-non-funded" and suggested that the title omit the words "Out-of-State and Foreign" since the section appears to apply to in-state courses as well.

Response: In-state- non-funded courses are those which institutions do not intend to report for formula funding purposes.

The new rules are adopted under Texas Education Code, Sections 61.051(j) and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

§5.151. Purpose.

This subchapter provides guidance to all public institutions of higher education in Texas regarding the delivery of distance education courses and programs. The goals are to ensure the quality of Texas-based distance education courses and programs and to provide residents with access to distance education courses and programs that meet their needs. The rules are designed to assure the quality of courses and programs as well as the adequacy of the technical and managerial infrastructures to support those courses and programs.

§5.152. Definitions.

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

(1) Off-Campus Instruction Plan–An institution's listing by location of off-campus courses and programs planned to be taught during an academic period.

(2) Board or Coordinating Board–The Texas Higher Education Coordinating Board.

(3) Commissioner–The Commissioner of Higher Education.

(4) Distance education–Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. Instruction may be synchronous or asynchronous, delivered to any single or multiple location(s):

(A) other than the "main campus" of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(B) outside the boundaries of the taxing district of a community/junior college district; or

(C) via instructional telecommunications to any other distance location.

(5) Instructional Telecommunications–Telecommunication technology systems employed to deliver distance education instruction.

(6) Off-Campus–Distance instruction provided face-to-face in which the instructor and student are in the same physical setting, but at a location other than the main campus of a university, health related institution, or technical college, or outside the taxing district of a community college.

(7) Program–Any certificate or degree program offered by a public institution of higher education.

(8) Regional Council–A cooperative arrangement among representatives of all public and independent higher education institutions within a State Uniform Service Region.

(9) Senior institution–Public universities, health science centers and health-related institutions.

(10) Service area–The territory served by a community/junior college district as defined in Subchapter J, Texas Education Code (relating to Junior College District Service Area).

(11) Institutional Plan for Distance Education–A long-term plan describing how an institution seeking authority to offer distance education instruction via telecommunications technology will ensure quality and resources in providing such instruction.

§5.153. Certification.

(a) Prior to offering any distance education course or program for the first time via telecommunications technology, a public community/junior college, technical college, university, or health-related institution must have approved by the Board an Institutional Plan for Distance Education as required by §5.156 of this title (relating to Institutional Plans for Distance Education).

(b) Each institution with an approved Institutional Plan for Distance Education shall submit an updated Plan addressing the required items in §5.154(a) of this title (relating to General Provisions) on a schedule to be determined by the Commissioner.

(c) An institution offering a full degree or certificate program is responsible for complying with relevant procedures and rules of the appropriate regulatory or accrediting agency, such as the Southern Association of Colleges and Schools (SACS), and professional certification boards.

(d) No graduate degree program may be offered via distance education without prior notification by the institution to the Commission on Colleges of the Southern Association of Colleges and Schools.

§5.154. General Provisions.

(a) The provisions of this subchapter are in accordance with Texas Education Code 61.051 provided for academic credit (not including continuing education other than workforce continuing education) by a public community/junior college outside of the boundaries of its taxing district, or by a public technical college, university, or health-related institution at a site other than the main campus where the primary office of the chief executive officer of the campus is located. This subchapter also applies to instruction offered at out-of-state or foreign locations by public institutions of higher education. All provisions of this subchapter relating to universities or to "senior institutions" apply equally to health science centers, health-related institutions, and to technical colleges.

(b) Distance education may occur via any combination of remote synchronous or asynchronous correspondence- or telecommunications-based delivery systems.

(c) To be identified as an off-campus course, the course must provide one-half or more of the instruction with the student and instructor in the same physical setting, but a setting apart from the main campus of the university, health related institution, or technical college, or outside the taxing district of the community college.

(d) A program is understood to be offered via distance education or off-campus instruction if a student may complete the program without taking any courses on the main campus of the public university, technical college, or health-related institution responsible for providing the instruction, or without physically attending classes within the boundaries of the taxing district of the community/junior college district responsible for providing the instruction.

(e) Notice of each course and program offered via distance education or off- campus instruction under the provisions of this subchapter, except to individual students, must be submitted to the Coordinating Board prior to its being offered in accordance with provisions and schedules determined by the Commissioner and the Board's uniform reporting system. The Board may also request special reports on distance education and off-campus courses and programs for inclusion in institutional and statewide reports.

(f) State-funded distance education and off-campus instruction must be reported in accordance with the Board's uniform reporting system.

(g) Following approval of its Institutional Plan for Distance Education (as required by §5.156 of this title (relating to Institutional Plan for Distance Education), the governing board of the institution may give final approval under procedures it develops for delivering courses and programs via distance education, with the following conditions and exceptions:

(1) Each course and program offered under the provisions of this subchapter must be within the role and mission of the institution responsible for offering the instruction.

(2) Prior approval may be required before an institution may offer courses and programs in certain subject area disciplines (e.g., high cost) or under other conditions specified by the Board.

(3) Each institution or system must have in place a process for the review and approval of distance education courses and programs for that entity.

(4) Before initiating a program delivered by distance education, an institution must affirm in writing its commitment to offer the program in accordance with the Principles of Good Practice for Academic Degree and Certificate Programs and Credit Courses Offered Electronically, as adopted by the Board, and the quality standards and criteria identified in this subchapter.

(5) All off-campus, lower division courses and programs to be offered by a public senior institution or by a technical college must be reviewed by the appropriate Regional Council(s) and/or peer institutions, and must be approved by the Commissioner before they are offered.

(6) A community-junior college intending to offer off-campus courses and programs outside its taxing district must notify all potentially affected Regional Councils of that intent prior to offering the course or program. Off-campus courses and programs offered outside the taxing district must be approved by the Commissioner before they are offered.

(7) No distance education or off-campus doctoral degree programs may be offered without specific prior approval by the Board.

(h) A class offered both on-campus and through distance education instruction is subject to the reporting provisions of this subchapter if any student receives more than one-half of the instruction via a distance education delivery system.

(i) If an institution offers an array of courses by distance education or off-campus instruction that would permit a student to complete a program in accordance with the definition in this subchapter, the array of courses will be considered to be a program.

(j) The Board shall periodically review Institutional Plans for Distance Education and courses and programs offered by distance education, and may disallow the offerings if such action is deemed to be in the interests of students, the institution, or the state.

(k) The Board retains final authority under statute for the offering of classes, courses, programs, and degrees, and may take whatever action it deems appropriate to comply with the Texas Education Code or to maintain a high quality and cost effective system of distance education, and off-campus instruction for the state.

§5.155. Standards and Criteria for Distance Education and Off-Campus Instruction.

The following standards and criteria apply to distance education and off-campus instruction.

(1) Instruction must meet the quality standards which an institution requires of similar instruction offered on-campus to regularly enrolled students.

(2) Courses which offer either regular college credit or Continuing Education Units must do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(3) Students must satisfy the same requirements for admission to the institution, to the program of which the course is a part, and to the class/section itself, as are required of on-campus students.

(4) Faculty must be selected and evaluated by the same standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus instruction. Institutions must provide training and support to enhance the added skills required of faculty teaching classes via instructional telecommunications.

(5) The instructor of record must participate in the delivery of instruction and evaluation of student progress.

(6) Providers of graduate-level instruction must be approved by the graduate faculty of the institution.

(7) All instruction must be administered under the authority of the same office or person administering the corresponding on-campus instruction. The supervision, monitoring, and evaluation processes for instructors must be comparable to those for on-campus instruction.

(8) Students must be provided academic support services including academic advising, counseling, library and other learning resources, tutoring services, and financial aid that are comparable to those available for on-campus students.

(9) Facilities (other than homes as instructional telecommunications reception sites) must be adequate for the purpose of delivering instruction which is comparable in quality to on-campus instruction.

§5.156. Institutional Plan for Distance Education.

(a) Each institution seeking first-time authority to offer distance education instruction via telecommunications technology must submit an Institutional Plan for Distance Education for approval by the Board before offering such instruction. The plan must describe how the institution will ensure that the following are addressed and provided for:

(1) Institutional Plan for Distance Education. Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education programs in accordance with the provisions of this subchapter.

(2) Curriculum and Instruction.

(A) The institution has an internal evaluation and approval process for distance education courses and programs.

(B) Courses and programs provide for timely and appropriate interaction between students and faculty, and among students.

(C) The institution assumes responsibility for and exercises oversight over distance education, ensuring both the rigor of programs and the quality of instruction.

(D) The institution ensures that the technology used is appropriate to the nature and objectives of the courses and programs.

(E) The institution ensures the currency of materials, programs, and courses.

(F) The institution's distance education policies are clear concerning ownership of materials, faculty compensation, copyright issues, and the utilization of revenue derived from the creation and production of software, telecourses, or other media products.

(G) The institution provides appropriate faculty support services specifically related to distance education.

(H) The institution provides a program of faculty training and development that addresses both the technological

and the instructional issues encountered when involved in distance teaching.

(3) Evaluation and Assessment.

(A) The institution assesses student capability to succeed in distance education programs and applies this information to admission and recruitment policies and decisions.

(B) The institution evaluates the educational effectiveness of its distance education programs (including assessments of student learning outcomes, student retention, and student satisfaction) to ensure comparability to campus-based programs.

(C) The institution has an evaluation plan for courses or programs with regard to the effectiveness of the technology chosen to deliver the courses.

(D) The institution ensures the integrity of student work and the credibility of the degrees and credits it awards.

(4) Library and Learning Resources.

(A) The institution ensures that students have access to and can effectively use appropriate library and learning resources.

(B) The institution monitors whether students make appropriate use of learning resources.

(C) The institution provides laboratories, facilities, and equipment appropriate to the courses or programs.

(D) If clinical or lab courses are planned, the means of facilitating those labs is described in detail: including location, facilities, access, security, and oversight by appropriate personnel.

(5) Student Services.

(A) The institution provides adequate access to the range of student services appropriate to support the courses and programs: including admissions, financial aid, academic advising, delivery of course materials, and placement and counseling.

(B) The institution provides an adequate means for resolving student complaints.

(C) The institution provides to students advertising, recruiting, and admissions information that adequately and accurately represents the courses and programs, requirements, and services available.

(D) The institution ensures that students admitted possess the knowledge and equipment necessary to use the technology employed in the courses and program, and provides aid to students who are experiencing difficulty using the required technology.

(6) Facilities and Finances.

(A) The institution possesses the equipment and technical expertise required for distance education.

(B) The institution's long range planning, budgeting, and policy development processes reflect the facilities, staffing, equipment, and other resources essential to the viability and effectiveness of its distance education courses and programs.

(C) The institution has a plan for the administration, operation, and use of technology to deliver distance education which addresses the capability of the institution to provide the technology required. If the institution plans to utilize technology housed at a separate location, this information must be provided as well.

(D) The institution has developed a budget for delivery of distance education courses or programs.

(b) An Institutional Plan for Distance Education should be accompanied by a proposal for approval of the initial courses to be offered by the institution which addresses applicable requirements in the Institutional Plan.

(c) Prior to Board consideration of an Institutional Plan, the Commissioner may approve a one-time offering of a limited number of distance education courses for experimental purposes.

§5.157. Off-Campus Instruction Plan.

(a) Unless specifically exempted by the Board, all off-campus courses taught for credit which will be reported for formula funding, except for courses offered by community colleges within their own taxing districts, must be submitted to appropriate higher education Regional Councils or peer institutions as provided in §5.154(g) of this title (relating to General Provisions). Non-credit adult and continuing education courses offered at a distance by universities and health science centers do not fall under the purview of this subchapter.

(b) Public and independent institutions which have concerns about possible unnecessary duplication of off-campus courses and programs planned for their Uniform Service Region may appeal to the Commissioner. The Commissioner may approve or disapprove the offering of off-campus courses or programs based on his investigation of such appeals.

(c) The Commissioner may exempt from instruction review procedures the following types of off-campus courses and programs:

(1) courses and programs offered by one public institution on the campus of another public institution; at multi-institution teaching centers and university system centers, and at other sites designated by the Board;

(2) courses and programs taught on military bases or in correctional institutions;

(3) courses offered as part of approved distance education certificates or degree programs; and

(4) courses pertaining to student teaching, internships, clinical instruction, practica, cooperative education work stations, and field classes (when limited to campus-based students).

(d) Instruction offered under all such exemptions, however, must still be reported in accordance with the Board's uniform reporting system and will be subject to monitoring for quality.

§5.158. Procedures for Review and Approval of Off-Campus Lower-Division Instruction.

(a) Each institution must submit to all affected Regional Councils an Off-Campus Instruction Plan in accordance with §5.157 of this title (relating to Off-Campus Instruction Plan) which lists by location all proposed off-campus lower-division instruction. Requests for new locations and/or substantially different classes or programs at previously approved locations must be submitted on application forms provided by the Commissioner for that purpose.

(b) Except for courses to be offered by a community college within its designated service area, proposed off-campus lower-division instruction must be reviewed by the Regional Council of the Uniform Service Region containing each proposed site for the receiving of instruction in accordance with the provisions of this subchapter.

(c) The Coordinating Board recognizes Regional Councils in each of the ten state Uniform Service Regions. The presidents or designated representatives of each public and independent institution of higher education with its main campus in the Region comprise the Council membership. A Council Chair shall be elected by the

members, with term of service to be determined by the respective Council.

(d) Each Regional Council has the following responsibilities:

(1) Develop and file with the Universities and Community and Technical College Divisions of the Coordinating Board its procedures and guidelines for reviewing Off-Campus Instruction Plans for proposed lower-division classes, programs, and locations in the Region.

(2) Facilitate inter-institutional cooperation in the conduct of off-campus instruction, assure that each institution in the Region has received notification in advance of all off-campus lower-division classes, programs, and locations proposed to be offered in the Region by any other institution, and provide each institution in the Region full opportunity to review and comment on the plans of other institutions.

(3) With the exception for courses and programs proposed to be offered by community colleges in their designated service area, make recommendations to the Commissioner regarding Off-Campus Instruction Plans proposed to be offered within its Uniform Service Region in accordance with the consensus views of Council members.

(4) Advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

(5) Encourage excellence in the conduct of off-campus lower-division instruction.

(6) Study cooperatively the various methods of providing lower-division off- campus instruction, and promote the use of those methods which support quality and promise the most effective and efficient use of state resources.

(e) Procedures for submitting applications to the Board for authorization to offer off- campus lower-division classes are as follows:

(1) Off-campus instruction proposed by an institution, other than a community college offering courses within its designated service area, shall be reviewed by the Regional Council and forwarded to the Coordinating Board by a deadline set by the Commissioner, together with the Council's recommendations for approval or disapproval.

(2) If proposed off-campus classes could affect an institution which is a member of another Regional Council, the Off-Campus Instruction Plan shall also be sent to that institution and to the Council to which it belongs. The full membership of that Council must review the proposal and return a recommendation to the originating Council. This recommendation and that of the originating Council must both be sent to the Commissioner.

(3) Recommendations of the Regional Councils shall be submitted in a time frame determined by the Commissioner to permit consideration by the Board at its appropriate quarterly meeting.

(4) The Commissioner shall consider the recommendations of Regional Councils as well as any dissenting report filed by an institution. Subject to the following section, the Commissioner has the authority to approve or disapprove courses and Off- Campus Instruction Plans, and to resolve disputes between or among institutions which cannot be resolved by the Councils. The Commissioner shall devise a procedure to encourage and assist Regional Councils in the resolution of such disputes. The Commissioner shall report to all affected institutions on approvals and disapprovals of classes proposed under each Off-Campus Instruction Plan at least two weeks before the scheduled April Board meeting, at which time the Board may hear appeals to approvals and disapprovals made by the Commissioner.

(f) During the passage of the year it may be necessary for an institution to request approval of off-campus lower-division courses or programs not submitted as part of its Off- Campus Instruction Plan. Such proposed amendments to a Plan must be submitted to affected Regional Councils prior to the teaching of any additional classes, except in cases in which a community college proposes to offer courses or programs within its designated service area. Each Council Chair shall forward recommendations to the Commissioner regarding the appropriateness of such instruction. The Commissioner has the authority to approve or disapprove courses and Off-Campus Instruction Plans, and to resolve disputes between or among institutions which cannot be resolved by the Councils.

§5.159. Procedures for Review and Approval of Off-Campus Upper-Level and Graduate Courses and Programs.

(a) Senior institutions shall notify all other potentially affected institutions of their plans to offer off-campus upper-level or graduate courses or programs for the next instructional period within the time frame prescribed by the Commissioner, and must seek to eliminate any conflicts or duplication.

(b) The Commissioner has the authority to resolve disputes between or among institutions, and has the authority to approve or disapprove the offering of off-campus courses or programs.

(c) The Commissioner shall report to all affected institutions on approvals and disapprovals of proposed off-campus activities at least two weeks before a regularly scheduled Board meeting, at which time the Board may hear appeals to approvals and disapprovals made by the Commissioner.

§5.160. Approval of State-Funded Out-of-State and Foreign Distance Education and Off- Campus Courses.

(a) State-funded out-of-state and foreign distance education and off-campus courses offered by Texas public institutions of higher education or by an approved consortium composed of Texas public institutions must have prior approval by the Commissioner in order for the semester credit hours or contact hours to be used for formula reimbursement. The following procedures shall apply:

(1) An institution or consortium must submit to the Commissioner a form which certifies that the course meets the standards and criteria set forth in subsection (b) of this section.

(2) A course that has been previously approved to be offered at an out-of-state or foreign location need not be resubmitted if the course is the same as that previously approved.

(3) State-funded courses taught outside of Texas are intended for students who are currently enrolled on campus at a Texas institution. Faculty should not teach off-campus courses out-of-state for state funding unless the faculty member is accompanying a cohort of students from a Texas institution.

(4) Institutions may enroll students who reside at the out-of-state locations in distance education or off-campus courses provided the credit hours generated by the out-of-state students are not submitted for formula funding.

(b) State-funded out-of-state and foreign distance education and off-campus courses are subject to the following standards and criteria:

(1) All students enrolled must meet all institutional standards for admission and must be actually admitted to the institution or one of the participating institutions in an approved consortium. All

students enrolled must pay the appropriate tuition and fees for their residency category for the total number of credit hours earned. Financial aid must be available to students registering in foreign classes on the same basis as it would be for such students seeking financial aid for on-campus instruction. Additional financial aid may be furnished by the institution as appropriate.

(2) Instruction must be provided by faculty of the institution or one of the consortium institutions and be supervised and evaluated according to appropriate institutional policies. Exceptions may be made by the Commissioner to take advantage of uniquely qualified instructors at an out-of-state or foreign location if the institution provides for individual justification and approval by the appropriate faculty or institutional officials.

(3) Individual courses must meet the following standards and criteria:

(A) Each course must be on the approved course inventory of the main campus of the institution or a consortium institution, must be a part of an approved degree or certificate program, and must be justified in terms of academic, cultural, or other resources available at the specific location(s).

(B) Instruction must conform to all relevant academic policies of the institution. All classes must conform to the institution's workload and enrollment requirements, contact hour/credit ratio, and similar matters.

(C) Courses may not offer credit for activities undertaken primarily for travel, recreation, or pleasure.

(D) Minimum class enrollments must conform to the same standards applicable were the class to be offered on-campus.

(4) Multi-course offerings must meet the following standards and criteria:

(A) A group of courses taught by an individual faculty member and offered in the same time period and in the same out-of-state or foreign location may be considered as an aggregate for approval purposes.

(B) Some courses may be approved within an aggregate request without satisfying paragraph (3)(A) of this subsection; however, the Commissioner may approve a multi-course aggregate only if at least one-half of the classes (making up at least one-half of the combined credit hours) comply with paragraph (3)(A) of this subsection. All other criteria in this subsection must be fully met by all courses that make up a multi-course aggregate.

(5) Advertising or marketing for out-of-state and foreign classes should emphasize the instructional nature of the classes, and may not emphasize or create the impression that the classes are primarily credit-for-travel experiences.

(6) Faculty and staff may not realize unusual perquisites or unusual financial gain for teaching out-of-state or foreign classes.

(7) Except for funds specifically appropriated for international activities (e.g. state incentive programs, scholarships, etc.), state funds may not be used for faculty or student travel, meals and lodging, or other incidental expenses associated with out-of-state or foreign instruction.

(8) Any free tickets for travel, accommodations, or other expenses provided by travel agents, carriers, or hotels must be used in direct support of the instructional program and may not be made as gifts to faculty or staff members or their families.

(9) No state funding will be provided for distance education courses or credits delivered to reception sites outside state boundaries without prior approval of the Commissioner.

(10) Out-of-state and foreign courses are subject to reporting in accordance with the uniform reporting system. Out-of-state and foreign courses that are not reported by location will be disallowed for funding.

§5.161. Non-State-Funded Out-of-State and Foreign Classes.

(a) In-state non-funded credit courses are governed by the same rules and regulations as regular funded courses, but non-state-funded credit courses need not be included in the Off-Campus Instruction Plan requests. Requests for authorization to offer non-state-funded credit courses may be submitted for approval by the Commissioner as the need arises. Non-credit adult and continuing education courses offered at a distance by universities and health science centers do not fall under the purview of this subchapter.

(b) Out-of-state and foreign courses offered by public universities and health- related institutions, for which no state funds are expended, may be taught without prior approval of the Board. However, full degree programs offered under these circumstances shall be approved in accordance with the provisions of Chapter 5, Subchapter E, §5.101 of this title (relating to Presentation of Request for New Academic Degree Programs. Institutions are expected to ensure that all such instruction meets the quality standards expected of Texas higher education institutions.

(c) Community and technical colleges proposing to offer out-of-state or foreign courses for which no state funds are expended are subject to the provisions of Chapter 9, Subchapter I of this title (relating to Distance Education).

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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James McWhorter
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Subchapter K. Private and Out-of-State Public Degree-Granting Institutions Operating in Texas

19 TAC §5.217

The Texas Higher Education Coordinating Board adopts amendments to §5.217 concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas (Off-Campus Operations, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions) without changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8805).

The amendments to the rules would grant an institution state authorization to seek accreditation for a higher-level degree after notifying the Commissioner of the new degree(s). This would result in less duplication of effort while allowing the accreditation process, which is the ultimate goal of certification

oversight, to work. The amendments to the rules would simplify the procedures by which exempt institutions obtain state authorization to add an advanced degree level, while continuing the Board's responsibilities under law.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Chapter 61, Subchapters G and H, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas (Off-Campus Operations, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions).

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

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Subchapter L. Operation of Off-Campus Educational Units of Senior Colleges and Universities

19 TAC §§5.241-5.243

The Texas Higher Education Coordinating Board adopts amendments to §§5.241, 5.242, and 5.243 concerning Operation of Off-Campus Educational Units of Senior Colleges and Universities. Section 5.242 and §5.243 are adopted with changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8805) and will be republished. Section 5.241 is being adopted without changes and will not be republished.

The amendments to the rules will provide for the creation of university system centers as well as describe their role, structure, degree programs, and other essential characteristics and they would provide for the supply/demand pathway by which public higher education could respond to areas of the state with limited or no access to public higher education.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Sections 61.051 and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operation of Off-Campus Educational Units of Senior Colleges and Universities.

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

(1) Off-campus educational unit–A subdivision under the management and control of an existing public university or central administration (hereinafter referred to as the parent institution) in a geographic setting separate from the parent institution. It exists for a specific purpose which is directly related to the teaching of courses for resident credit at the parent institution, or for providing administrative support which facilitates the teaching of such courses. An off-campus unit, as used herein, is not a separate general academic institution and therefore does not have completely independent life within itself as regards academic, administrative, and fiscal matters, but has dependence upon the parent institution in such matters.

(2) General academic teaching institution–A degree-granting public university established by the Texas Legislature as an independent educational unit under the direct authority of a statutory governing board (see Texas Education Code, Chapter 61, Section 61.003). Within the limits of the policies and regulations established by appropriate state authority and its governing board, an operationally separate institution is autonomous in academic, administrative, and fiscal matters. It is located on its own individual campus; is accredited by the Southern Association of Colleges and Schools; and has degree-granting authority. The minimum enrollment level which must be met before the Coordinating Board will consider recommending that the legislature establish an existing off-campus educational unit as a separate general academic institution as 3,500 full-time student equivalents (FTSE) enrolled on the campus. General academic institutions in existence prior to January, 1998 are excluded from this provision. Off-campus enrollments may not be counted in reaching these enrollment levels.

(3) Multi-Institution Teaching Center–An "off-campus educational unit" or an "auxiliary location" administered under a formal agreement between two or more public higher education institutions. It may also involve one or more private institutions. It exists for the purpose of providing credit instruction from several "parent institutions" in a common geographic setting. It is not a separate general academic institution and does not have independence regarding academic, administrative, or fiscal matters. Each signatory to the agreement may offer credit courses and, with prior Coordinating Board approval, may also offer degree programs by and in the name of the parent institution.

(4) University System Center–An "off-campus educational unit" of an existing general academic institution designated and supported by a university system with Coordinating Board approval. It is not a separate general academic institution and does not have independence regarding academic, administrative, or fiscal matters.

(5) Upper-Level General Academic Institution–An upper-level general academic institution is established for the primary purpose of expanding baccalaureate and master degree opportunities to Texas citizens in certain geographic areas in relation to one or more local public community junior colleges. An upper-level general academic institution offers junior, senior, and certain graduate level courses in programs approved by the Coordinating Board. It is restricted to accepting students eligible for upper division classification and may not offer freshman and sophomore level courses.

(6) Supply/Demand Pathway–The Supply/Demand pathway is a developmental approach to providing access which allows for the gradual increase of resources as demand grows, operating under the principle of avoiding over- commitment as well as under-commitment of state resources.

§5.243. Supply/Demand Pathway.

(a) The Supply/Demand Pathway shall be used as the model to address higher education needs in areas without ready geographic access to existing public higher education institutions.

(b) The supply/demand pathway incorporates three categories:

(1) Category A. Test the market both in terms of demand and lasting power by providing off-campus courses and/or programs by one or more institutions. Should demand decrease or not materialize, courses and programs can be discontinued and resources moved to areas of greater demand.

(2) Category B. As demand increases, offerings may be organized through a multi-institution teaching center or as a university system center. The MITC can be housed in a shopping center, a high school, a community college, or other space on loan or for a nominal cost. Alternatively, a university system may request that the Coordinating Board authorize the establishment of a university system center. The system would designate a parent institution to provide leadership for the center and would facilitate the provision of programs and resources from other institutions in the system. In either case, the system and parent institution must commit to providing a program long enough for a student to have a reasonable opportunity to graduate before the resource is withdrawn.

(3) Category C. After a university system center is established and the center has attained a full-time equivalent enrollment of 3,500 for four fall semesters (approximating the headcount enrollment included in the current university funding formula as the minimum size needed to achieve economies of scale), the parent institution and its Board of Regents may request that the Coordinating Board review the status of the center and recommend that the Legislature reclassify the university center as an upper-level general academic institution a university. Reclassification may be considered sooner if the center attains a fall semester full-time equivalent enrollment of 3,500 followed the next fall semester by a full-time equivalent enrollment of 4,000.

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19 TAC §5.246

The Texas Higher Education Coordinating Board adopts new §5.246 concerning Operation of Off-Campus Educational Units of Senior Colleges and Universities (University System Centers) with changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8808).

The new rule will provide for the creation of university system centers as well as describe their role, structure, degree programs, and other essential characteristics and they would provide for the supply/demand pathway by which public higher education could respond to areas of the state with limited or no access to public higher education.

There were no comments received regarding the proposed rule.

The new rule is adopted under Texas Education Code, Sections 61.051 and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operation of Off-Campus Educational Units of Senior Colleges and Universities.

§5.246. University System Centers.

(a) Role and Mission. University system centers are off-campus educational units of a designated existing public university and created by a university system with Coordinating Board approval. The centers are intended to respond to the academic needs of local regions and provide greater access to students who are location bound. The strength of a university system center is the quality of its teaching and its focus on student-learning outcomes.

(b) Funding. State funding for university centers shall be provided through the normal formula appropriation to the parent institution and other participating institutions.

(c) Course and program approval. University system centers shall focus on teaching and emphasize a limited range of baccalaureate programs. Additional programs may be offered by other institutions within the university system.

(1) Upon review and approval of the Coordinating Board, the parent university shall be authorized to offer high-demand degrees at the university system center.

(2) A limited range of master's programs in such areas will also be allowed.

(3) Additional criteria for courses and programs shall include the following:

(A) Programs offered by the university system center's own faculty should have average enrollments of at least 75 students.

(B) Programs no longer meeting adequate enrollment levels shall be continued long enough for a student to have a reasonable opportunity to graduate.

(C) Degrees shall be awarded by the parent institution or the institution offering the degree.

(D) Additional baccalaureate and master's degree programs may be delivered by telecommunications or on-site by the parent institution and by other universities as arranged by the university system, which will provide support in the delivery of programs to meet local needs. Programs offered by this method must be recommended by the system and reviewed and approved by the Coordinating Board in compliance with its rules.

(d) Technology. University centers shall take full advantage of technological advances that promise to improve quality of learning, access to programs, and efficient use of existing resources. Libraries shall be models of the effective use of technology in libraries and depend heavily on the TexShare electronic resource sharing efforts.

(e) Administrative and Academic Support. The university system center shall be headed by a dean or executive director as determined by the parent university and system. The number of local administrators and faculty shall be less than that at a free standing general academic institution of comparable size. Additional administrative and academic program support shall be provided by both the parent institution and the system.

(f) University system centers:

(1) Shall use locally provided facilities, located on or near community or technical college campuses whenever possible.

(2) Shall develop articulation agreements and partnerships with local community and technical colleges and other universities.

(3) Shall generate formula appropriations for semester credit hours taught. Appropriations shall be made to the parent university and to other universities that provide courses at the center.

(4) Shall develop flexible scheduling and course options, credit and non- credit course and program offerings, distance education opportunities, and support services for traditional and non-traditional students from diverse backgrounds.

(5) Shall meet the Coordinating Board's Technology Standards.

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

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Chapter 9. Program Development in Public Community/Junior College Districts and Technical Colleges

Subchapter H. Partnerships Between Seconday Schools and Public Two-Year Associate Degree-Granting Institutions

19 TAC §§9.141–9.146

The Texas Higher Education Coordinating Board adopts new §§9.141-9.146 concerning Partnerships Between Secondary Schools and Public Two-Year Associate Degree-Granting Institutions. Sections 9.141-9.143 and 9.145-9.146 are adopted with changes to the proposed text as published in the August 28, 1998 issue of the *Texas Register* (23 TexReg 8809) and will be republished. Section 9.144 is being adopted without changes and will not be republished.

The new rules will explain the types of partnerships between high schools and public two-year colleges; list required elements to be included in partnership agreements; and establish criteria to ensure quality instruction at the college-level in courses offered for concurrent credit.

Comments were received from the following institutions: Austin Community College, Garland ISD, Bee County College, Irving ISD, Blinn College, Lancaster ISD, Cisco Junior College, Midland ISD, Dallas County CCD, Richardson ISD, Frank Phillips College, Wilmer- Hutchins ISD, Houston CCS, Kilgore College, Midland College, North Harris Montgomery CCD, South Plains College, Texas State Technical College-Waco, Trinity Valley Community College, Tyler Junior College, and The Victoria College.

Some of the comments suggested changes to language, to include but not limited to: "Early College Start" for general references to all college/high school credit combinations throughout subchapter, "Dual Credit" for "Concurrent Course Credit" throughout subchapter, "Co-enrollment" and/or "Credit in Escrow" for "Tech-Prep" throughout subchapter, "college-level credit" for "college associate degree credit" 9.143(b), addition of "or more" to "at least one area" 9.145(a)(1), "or their designee" to "chief academic officer" 9.145(a)(4); and general comments about impact of various sections proposed, to include but not limited to: routine articulation between high schools and colleges is not included 9.143, too much paperwork involved in requiring contracts for all high school/college partnerships 9.144(a), length and detail of agreement elements not necessary 9.144(b), TASP and TAAS requirements will create barriers to different types of students 9.145(a), limitation of high school classes to only concurrent, advanced placement, and/or college credit students is unfair to small school districts that may not have enough students to fill this type of class 9.145(c), more specific process for determining college equivalency for concurrent credit course instruction and materials 9.145(e)(2) grading criteria may place undue pressure on faculty 9.145(f), funding should be allowed for colleges who provide remediation for high school students 9.146(a), TAAS passage for developmental education eligibility will allow special education students (exempt from TAAS) to enroll 9.146(b).

Agency Response: One change was made in response to the concern of loss of flexibility by colleges and high schools in offering college-level courses to high school students [9.145(c)]. No other changes were made in response to the comments because the rules as adopted are necessary to ensure quality, rigor, and appropriateness of college courses and programs and to avoid duplication of state funding for high school remediation and college developmental instruction.

The new rules are adopted under Texas Education Code, Sections 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Partnerships between Secondary Schools and Public Two-Year Associate Degree Granting Institutions.

§9.141. Purpose.

(a) The Coordinating Board encourages and supports partnerships between secondary schools and public two-year associate degree-granting institutions, including such initiatives as Tech-Prep and concurrent course credit which allow secondary students to receive both high school and college-level credit for college-level courses.

(b) The purpose of this subchapter shall be to provide rules and regulations for public two-year associate degree-granting institutions in partnership initiatives with secondary schools.

§9.142. Authority.

Texas Education Code, Sections 29.182, 29.184, 61.076(a), 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year associate degree-granting institutions to enter into agreements with secondary schools to offer courses which grant credit toward the student's high school academic requirements and/or college-level credit.

§9.143. Types of Partnerships.

(a) Partnerships for Award of High School Credit Only. Contractual agreements between public school districts and public two-

year associate degree-granting institutions in which the latter provide instruction in courses to high school students for award of high school credit only. Rules for these agreements are located in Subchapter G, §9.125 of this title (relating to Contractual Agreements).

(b) Partnerships for Award of Concurrent Course Credit. Partnerships between secondary schools and public two-year associate degree-granting institutions in which the latter provide instruction to high school students for immediate award of both high school credit and college certificate and associate degree credit.

(c) Partnerships for Tech-Prep Programs. Partnerships between public school districts and public two-year associate degree-granting institutions to allow for the articulation of high school technical courses taught by the high school to high school students for immediate high school credit and later college credit, to be awarded upon enrollment of the students in a two-year associate degree-granting institutions in an associate degree or certificate program.

(d) Partnerships for Remedial or Developmental Instruction for High School Graduates. Partnerships between public school districts and public two-year associate degree-granting institutions to provide instruction by the latter to high school students for either remedial course work to prepare students to pass the Texas Assessment of Academic Skills (TAAS) test or developmental course work to prepare the students to pass the Texas Academic Skills Program (TASP) test.

§9.145. Concurrent Course Credit.

(a) Student Eligibility Requirements.

(1) To be eligible for enrollment in a concurrent credit course in an associate degree or level two certificate (TASP-eligible) program, the high school student must present a passing score on the Texas Academic Skills Program (TASP) test or a Board-approved alternative assessment instrument in at least one area (mathematics, reading, writing) as deemed applicable by the college for the intended concurrent course in which the student shall enroll. Students who are exempt from taking the TASP test or the alternative assessment are also exempt for purposes of concurrent course credit. Concurrent course credit students must comply with the rules and regulations of Chapter 5, Subchapter P of this title (relating to Testing and Developmental Education).

(2) To be eligible for enrollment in a concurrent credit course in a TASP- waived college certificate program, the high school student must have passed all sections of the exit-level TAAS test.

(3) Students who are home-schooled or enrolled in private or non-accredited secondary schools must satisfy paragraph (1) of this Subsection.

(4) The class load of a high school student shall not exceed two college credit courses per semester. However, under special circumstances that indicate a student with exceptional academic abilities is capable of college-level work, based on such factors as grade-point average, ACT or SAT scores, and other assessment indicators, the chief academic officer of a public two-year associate degree-granting institution may grant exceptions to this requirement.

(b) Faculty Qualifications.

(1) All instructors must meet the minimal requirements as specified by the Commission on Colleges of the Southern Association of Colleges and Schools.

(2) The college shall select, supervise, and evaluate instructors for courses which result in the award of concurrent credit.

(3) Instructors teaching courses which result in the award of concurrent credit must be regularly employed faculty members or must meet the same standards, review, and approval procedures used by the college to select faculty responsible for teaching the same courses at the main campus of the college.

(4) Official transcripts of instructors must be kept on file at the college.

(c) Location and Student Composition of Classes for Concurrent Course Credit. Concurrent credit courses must be taught on the college campus or in classes composed solely of concurrent, advanced placement (AP), and/or college credit students. Exceptions for a mixed class, one composed partly of students enrolled for high school credit only and partly of students enrolled for concurrent, AP, and/or college credit, will be allowed under one of the following three conditions:

(1) If the course involved is required for completion under the State Board of Education Recommended High School Program graduation requirements and the high school involved is otherwise unable to offer such course; or

(2) If the high school involved is classified by the Texas University Interscholastic League as a Class AA school or below, the mixed class will be allowed until September 2002, by which time small school districts should have developed the capacity to receive concurrent credit courses from colleges via instructional telecommunications; or

(3) If the mixed class is limited to enrollment of high school honors students, all of whom will be taught the college-level course.

(d) Student Services.

(1) Students must be given access to the college library, accorded appropriate privileges, and have adequate library resources convenient for use at the site where concurrent course credit is offered.

(2) Students enrolled in concurrent course credit must be provided adequate academic support services including academic advising and counseling.

(e) Eligible Courses.

(1) Courses offered for concurrent course credit must be identified as college-level academic courses in the current edition of the Community College General Academic Course Guide Manual or as college-level technical courses in an approved Tech-Prep or Associate of Applied Science (AAS) degree or certificate program.

(2) Instruction and materials for concurrent course credit must be at the equivalent level of the instruction and materials used for the identical course taught on the main campus of the college.

(f) Grading Criteria. For technical and academic concurrent credit courses, grading criteria should be devised to allow faculty the opportunity to award high school only or high school and college credit depending upon student performance.

(g) Transcripting of Credit. For technical and academic concurrent credit courses, high school as well as college credit should be transcripted immediately upon a student's successful completion of the performance required in the course.

(h) Funding.

(1) The state funding for concurrent credit courses will be available to both public school districts and public two-year associate degree-granting institutions based upon the current agreement

between the Commissioner of Education and the Commissioner of Higher Education.

(2) The college may claim funding for all students enrolled in concurrent course credit.

(3) Only a public community/junior college may waive tuition and fees for a Texas public high school student enrolled in a course for which the student may receive concurrent course enrollment credit. Public technical colleges and other public two-year associate degree-granting institutions may not waive tuition and fees.

§9.146. Remedial and Developmental Instruction for High School Students.

(a) As outlined under Chapter 9, Subchapter G, §9.125 of this title (relating to Contractual Agreements for Instruction with Public Secondary Schools) community/junior and technical colleges may contract with public secondary school districts to provide remedial courses for students enrolled in public secondary schools in preparation for graduation from high school. Such courses are not eligible for state formula funding.

(b) High school students who have passed all sections of the exit-level TAAS test may be permitted to enroll in state-funded developmental courses offered by a college at the college's discretion if a need for such course work is indicated by student performance on the TASP test or an approved alternative assessment instrument.

(c) Remedial and developmental courses may not be offered for concurrent course credit.

(d) Only a public community/junior college may waive tuition and fees for a Texas public high school student enrolled in a remedial course or a developmental course. Public technical colleges and other public two-year associate degree-granting institutions may not waive tuition and fees.

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Chapter 12. Proprietary Schools

Subchapter A. Purpose and Authority

19 TAC §§12.21, 12.22, 12.24

The Texas Higher Education Coordinating Board adopts amendments to §§12.21, 12.22, and 12.24 concerning Proprietary Schools (Purpose and Authority). Section 12.22 and §12.24 are adopted with changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8963) and will be republished. Section 12.21 is being adopted without changes and will not be republished.

The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

Comments were received from the Career Colleges and Schools of Texas organization. Comments consisted of recommendations for re-organizing certain sections of the proposed amendments for purposes of clarity and simplicity. The agency agreed with the recommendations and changes were made accordingly.

The amendments to the rules are adopted under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Purpose and Authority).

§12.22. Authority.

The Texas Education Code, Chapter 132, Section 132.063, and Chapter 61, Subchapter G authorizes the Texas Higher Education Coordinating Board to establish and enforce minimum standards for the approval and on-going assessment of programs of study leading to degrees offered by proprietary institutions.

§12.24. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acknowledgment of accreditation–The Board's understanding that an accreditor is recognized and approved by the United States Department of Education as an accreditor of applied associate degree programs offered by proprietary institutions.

(2) Agent–A proprietary institution owner, partner, stockholder, officer, recruiter, administrator, faculty member, financial aid counselor, academic counselor or other person who represents the institution in an official capacity. Persons employed in clerical, custodial, or similar positions, or shareholders with no direct relationship to the institution, are not considered agents of an institution.

(3) Annual Fee–A fee established by the Board, collected on an annual basis, from proprietary institutions with authorization to grant degrees, and used to offset the cost of proprietary degree program oversight.

(4) Applied Associate Degree–Refers specifically to the A.A.A., A.A.S., and A.O.S. degrees in this chapter.

(5) Appropriate credentials in counseling–Certification by the National Board for Certified Counselors or Texas licensure to practice counseling.

(6) Appropriate training in counseling–An earned graduate degree in counseling, student personnel (with counseling emphasis), counseling psychology, or closely related field, from a regionally accredited college or university.

(7) Articulation–A planned process linking educational institutions and experiences to assist students in making a smooth transition from one level of technical and vocational education to another without experiencing delays or duplication of learning.

(8) Associate of Occupational Studies–Refers specifically to the A.O.S. degree. The A.O.S. degree is approved according to the conditions of the Coordinating Board policy adopted on April 30, 1993: The State of Texas has four proprietary schools awarding the A.O.S. degree: MTI College of Business and Technology (known as Microcomputer Technology Institute when this policy

was adopted), Universal Technical Institute, Southwest School of Electronics, and Western Technical Institute. The A.O.S. degree is awarded for the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of these four schools may continue to award the A.O.S. degree for those fields listed above and shall be restricted to those fields. Subspecialities within these fields and under the present titles may be offered and advertised upon providing prior notice to the Board. No new A.O.S. degree programs in other fields from these four schools or any other schools will be considered by the Board. Should any of these four schools choose to propose to offer degrees in other fields or should these four institutions open schools outside of the metropolitan locations in which they were operating as of April 29, 1993, they will be required to design programs which lead to the A.A.S. degree.

(9) Basic Computer Instruction–Formal course work in the fundamentals of personal computer operation.

(10) Board and coordinating board–The Texas Higher Education Coordinating Board.

(11) Change of ownership–Any change in control of a school or an agreement to transfer control of a school. The control of a school is considered to have changed:

(A) In the case of ownership by an individual, when more than 50 percent of the school has been sold or transferred;

(B) In the case of ownership by a partnership or a corporation, when more than 50 percent of the school or of the owning partnership or corporation has been sold or transferred;

(C) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school; or

(D) A change of ownership and control does not include a transfer which occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse or child; spouse's parent or sibling; or sibling's or child's spouse.

(12) Cited–Any reference to an institution in a negative finding or action by an accreditor.

(13) Commissioner–The Commissioner of Higher Education.

(14) Concurrent Instruction–Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(15) Contract Instruction–Specifically targeted instruction designed by a proprietary school and a contracting entity.

(16) Degree–Any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's and their equivalents, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic/occupational degree-level program among Texas postsecondary institutions.

(17) Developmental courses–Courses designated as remedial or compensatory education courses. Credit earned in a developmental course is not applicable toward the applied associate degree. Also see remediation.

(18) Distance Education–Instruction delivered by any means to any single or multiple location(s):

(A) other than the campus or other Board-approved site where the instruction originates; or

(B) via instructional telecommunications to any other distance location.

(19) Exempt–A degree-granting institution which is exempt from Texas Education Code, Chapter 132.

(20) Faculty member–A teacher as described in §12.44(a) and (b) of this title (relating to Basic Standards).

(21) Full-time faculty member–A person whose major employment is with the institution, whose primary assignment is teaching, and whose employment is based on an agreement for full-time employees.

(22) Institution–See proprietary school.

(23) Instructional telecommunication(s)–Refers to distance learning instruction delivered primarily by telecommunications technology. Delivery systems may include but are not limited to one or more of the following: interactive video, open-channel television, cable television, closed-circuit television, communication and/or direct broadcast satellite, satellite master antenna system, microwave, video tape, video disc, computer software, computer networks, and telephone lines.

(24) Learning resource center administrator–A person who holds an earned degree in library science from a regionally accredited college or university or who is otherwise qualified by experience acceptable to the Board to oversee the activities of a proprietary school learning resources center or library.

(25) Library/Learning Resources–Instructional materials (e.g. books, audio- visual equipment, and computers) that support the educational/vocational development of the student.

(26) Multiple Site Program Offering–Any extension location where course(s) which are alleged to entitle a student to an applied associate degree are offered.

(27) Newly-enrolled student–A person who has been admitted to a program of study for the first time.

(28) Owner–The proprietor of a school including an individual; a partnership including all full, silent, and limited partners; a corporation or corporations including directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares.

(29) Person–Any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(30) Program Approval–The process whereby an institution requests authorization to implement a technical or vocational program leading to the applied associate degree.

(31) Program of Study–Any course or grouping of courses which entitle a student to an applied associate degree or to credits which are applicable to an applied associate degree.

(32) Proprietary School–Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by this chapter, and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(33) Prospective student–A person who expresses interest in a program of study and who is provided with written information about the institution or any of the institutions' programs.

(34) Recognized accrediting agency–The Commission on Colleges, Southern Association of Colleges and Schools; the American Association of Bible Colleges; or the Association of Theological Schools in the United States and Canada.

(35) Remediation–An activity designed to teach basic competency in such areas as reading, writing, oral communications, arithmetic, or other rudimentary subjects.

(36) Representative–See Agent.

(37) Resident faculty member–A faculty member who has been formally hired or has an employment agreement with the institution.

(38) Returning student–A person who is returning to a program of study following withdrawal or other absence of more than one academic semester or one academic quarter.

(39) Target market area–The local, regional, statewide, and/or national area from which the institution's students are drawn and in which employment opportunities have been identified for graduates of that institution's applied associate degree programs.

(40) Teaching day–The time period when regular classes are scheduled including the time period for regular evening classes.

(41) Teach-out agreement–A formal arrangement between a closed proprietary institution and another institution authorized by the Coordinating Board to grant the applied associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed proprietary school.

(42) Teach-out Institution–An institution that is authorized by the Coordinating Board to grant the applied associate degree and that has formally accepted the transfer of students from a proprietary school that has closed.

(43) Testing irregularity–Any act of dishonesty involving the TASP Test. Further definition is contained in Chapter 5, Subchapter P, of this title (relating to Testing and Developmental Education).

(44) Texas Academic Skills Program (TASP)–Test The test required by Texas Education Code 51.306, which shall be uniformly administered statewide on days prescribed by the Board and shall be scored by the testing contractor. The test measures college readiness in reading, writing, and mathematics and includes a written essay. It is administered under secure conditions and each student is provided with diagnostic information regarding test performance.

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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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Subchapter B. Basic Standards

19 TAC §§12.41, 12.44

The Texas Higher Education Coordinating Board adopts amendments to §12.41 and §12.44 concerning Proprietary Schools (Basic Standards) with changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8966).

The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

Comments were received from the Career Colleges and Schools of Texas organization. Comments consisted of recommendations for re-organizing certain sections of the proposed amendments for purposes of clarity and simplicity. The agency agreed with the recommendations and changes were made accordingly.

The amendments to the rules are adopted under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

§12.41. Minimum Standards for Applied Associate Degrees.

The standards specified in this Subchapter apply to proprietary institutions offering applied associate degrees. Private post-secondary institutions seeking authority to offer a baccalaureate or higher degree must seek approval from the Board and are subject to the standards contained in Chapter 5, Subchapter K, of this title (relating to Private and Out-of- state Public Degree-Granting Institutions Operating in Texas).

(1) Application for a Certificate of Authorization. The application for a certificate of authorization to offer a degree shall contain, at minimum, all information, documentation, and material required by the Guidelines for Instructional Programs in Workforce Education. In addition, the application shall contain a description of the purpose of the institution, names of sponsors or owners of the institution, regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution; the names and addresses of the chief administrative officer, and the principal administrators and each member of the board of trustees or other governing board. In addition the application shall contain a full description of the admission requirements and a description of the facilities and equipment utilized by the institution. No less than 30 days prior to implementation of the program, the institution must submit the names and addresses of the faculty who will teach in the program of study, with the highest degree held by each.

(2) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that students will receive education consistent with the objectives of the course or program of study.

(3) Instructional Assessment. Provisions shall be made for the continual assessment of the program of study, including the evaluation and improvement of instruction.

(4) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the program of study shall be offered in organized classes by the institution.

(5) General Education. The degree program shall contain a general education component consisting of the number of credit hours specified in the Guidelines for Instructional Programs in Workforce Education.

(A) This component shall be drawn from each of the following areas: humanities and fine arts, social and behavioral science, natural sciences and mathematics. It shall include courses to develop skills in written and oral communication and in basic computer operation. Courses designed to correct deficiencies, remedial courses, and leveling courses may not count toward course requirements for the degree.

(B) The institution may arrange for all or part of the general education component to be taught by another institution with the following provisions: there must be a written agreement between the institutions to provide the general education component, courses must be offered in organized classes, and the providing institution shall be accredited by a recognized accrediting agency or must possess a Coordinating Board certificate of authorization to grant degrees.

(6) Credit for Prior Learning. If an institution awards credit for prior learning obtained outside a formal collegiate setting, the institution must establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree program(s). The method of evaluating prior learning must be subject to ongoing review and evaluation by the institution's teaching faculty. In no instance shall course credit be awarded solely on the basis of life experience or years of service in a position or job. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used to evaluate prior learning.

(7) Library. The institution shall have in its possession or under its direct control a sufficient quality and variety of library holdings to adequately support its own curriculum.

(A) All holdings shall be cataloged according to the Dewey Decimal, Library of Congress, or similar system. There must be a convenient and organized system whereby students may borrow library materials available for circulation. The library must be open and accessible to students and faculty members throughout the teaching day and at appropriate times before and after scheduled classes. The library shall have adequate facilities to contain the holdings, and space for student and faculty study.

(B) The institution must employ a learning resources administrator who shall be responsible for oversight of the library and on-site learning resources. The learning resources administrator may perform additional duties and assignments at the institution.

(C) The institution is encouraged to seek an agreement with a nearby academic library which permits students to use those facilities. When such arrangements are made, the agreement shall be in writing. In no instance will an institution be permitted to rely upon external library resources in lieu of establishing and maintaining an adequate library on-site.

(8) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide good quality education and training.

(9) Financial Resources and Stability. The institution shall have the adequate financial resources and financial stability to satisfy the financial regulations of the Texas Workforce Commission, the United States Department of Education if the institution participates in Title IV financial aid programs, and the institution's accrediting agency. The institution shall furthermore have sufficient financial reserves so that it would be able to teach-out currently enrolled students if it were unable to admit any new students.

(10) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with generally accepted accounting practices.

(11) Academic Freedom and Faculty Security. The institution shall adopt and distribute to all members of the faculty a statement assuring freedom in teaching, scholarly inquiry, and dissemination of knowledge. This requirement in no way limits an institution's legitimate evaluation of faculty member performance.

(A) All policies concerning promotion, non-renewal or termination of appointments, including for cause, shall be described in writing and furnished to all faculty members.

(B) The specific terms and conditions of employment of each faculty member shall be clearly described in writing and furnished to each faculty member.

(12) Academic Records. A system of record keeping shall be established and maintained in a manner consistent with accepted and professional practice in higher education. Records shall be securely maintained at all times. Contents of records shall, at minimum, include attendance and progress or grades. Two copies of the information necessary to generate student transcripts shall be maintained at separate locations. At least one copy shall be secured in a manner which is resistant to destruction by fire and natural disaster. Transcripts shall be issued upon the request of students or former students. An institution may, however, withhold a student's transcript under the condition stipulated in 132.062, Texas Education Code.

(13) Catalog. The information listed in subparagraphs (A)-(O) of this paragraph shall be provided to prospective students prior to enrollment. The institution shall, on an annual basis, furnish the Board with a copy of its most current catalog and a current roster of all faculty members including names, addresses, teaching assignments, and highest degree earned. The institution shall provide students and other interested persons with a catalog or brochure containing at minimum:

(A) the mission of the institution;

(B) a statement of admissions policies;

(C) information describing the purpose, length, and objectives of the program(s) offered by the institution;

(D) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(E) cancellation and refund policies;

(F) a definition of the unit of credit as it applies at the institution;

(G) an explanation of satisfactory progress as it applies at the institution; an explanation of the grading or marking system;

(H) the institution's calendar including the beginning and ending dates for each instructional term, holidays, and registration dates;

(I) a listing of full-time faculty members showing highest earned degree and identifying the institution which awarded the degree;

(J) areas of faculty specialization;

(K) names and titles of administrators;

(L) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(M) a complete listing of all scholarships offered, if any;

(N) a statement describing the nature and extent of available student services; and

(O) any disclosures specified by the Board or defined in Board rules.

(14) Refund Policy. The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(15) Credentials. Upon completion of an approved program of study, students shall be given appropriate credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(16) Student Rights and Responsibilities. A handbook, catalog, or other publication listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and shall inform each student of these policies in writing.

(17) Housing. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(18) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable rules and regulations of the Texas Workforce Commission.

(19) Open and Accurate Representation of Activities. Neither the institution or its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, or misleading.

(20) Distance Learning.

(A) General Provisions

(i) No degree program may be offered via distance learning instruction without prior approval by the Board. In addition, an institution may not offer through distance learning instruction at any site the number and array of courses that would constitute a degree program without prior approval by the Board to offer a full program at that site.

(ii) The institution shall formulate clear and explicit goals for any distance learning which is included in an approved degree program. The institution must demonstrate that distance learning included in an approved degree program is consistent with the stated purpose of the institution and the program of study. The institution must furthermore demonstrate that it achieves these goals and that its distance learning courses and programs are effective and comply with all relevant Board rules and guidelines.

(B) Standards and Criteria for Distance Learning

(i) Distance learning instruction offered by any live or telecommunications delivery system must be comparable to and meet all quality standards required of on-campus instruction.

(ii) A distance learning course which offers regular college credit must do so in accordance with the standards contained in this chapter and in the Guidelines for Instructional Programs in Workforce Education.

(iii) Students enrolled in distance learning must satisfy the same requirements for admission to the institution, to the program of which the course is a part, and to the class/section itself, as are required of on-campus students.

(iv) Faculty providing distance learning must be selected and evaluated by the same standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on- campus instruction. Institutions must provide training and support to enhance the added skills required of faculty teaching classes via instructional telecommunications.

(v) The instructor of record for a distance learning course must participate in the delivery of instruction and evaluation of student progress.

(vi) All distance learning instruction must be administered under the same office or person administering the corresponding on- campus instruction. The supervision, monitoring, and evaluation processes for instructors must be comparable to those for on-campus instruction.

(vii) Students enrolled in distance learning must be provided with academic support services including academic advising, counseling, library and other learning resources, tutoring services, and financial aid. These services must be comparable to those available for students receiving on-campus instruction.

(viii) The institution shall assure that facilities for distance learning (other than private homes as instructional telecommunications reception sites) are adequate for the purpose of delivering telecommunications instruction and are comparable in quality to on-campus facilities.

(ix) The institution must inform the Board if a course which is part of a currently approved degree program will be offered via distance learning. As a courtesy, the institution should also notify the chairperson of the appropriate Higher Education Regional Council(s) of the course offering via distance learning. Newly developed courses which the institution desires to include in an approved degree program, or which are included in an application for a new degree program, and which are to be offered via distance learning are subject to the same Board review and approval process as on-campus courses.

§12.44. Faculty Qualifications.

The character, education, and experience in education of the faculty shall be such as may reasonably ensure that students will receive an education consistent with the objectives of the program of study.

(1) General Education Faculty. All full-time and part-time faculty members teaching general education courses must have completed 18 graduate semester hours in their teaching field and hold a master's degree. Exceptions to academic preparation must be justified by the institution on an individual basis. Exceptions are subject to review and approval by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(2) Technical/Specialty Faculty. All full-time and part-time faculty in technical/specialty courses must have both academic and work experience. The minimum academic preparation for faculty teaching in professional and technical fields must be at the degree level at which the faculty member is teaching. Faculty who teach technical specialty courses must have three years of direct or closely related work experience exclusive of teaching. Exceptions to academic preparation or work experience must be justified by the institution on an individual basis. Exceptions are subject to review and approval by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(3) It shall be the responsibility of the institution to maintain an in-service continuing education program to encourage professional growth and development of faculty members.

(4) All institutions shall demonstrate promotion of teaching excellence by developing a written plan for faculty professional development. The plan must address full and part-time faculty preparation and professional development.

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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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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19 TAC §12.56

The Texas Higher Education Coordinating Board adopts new §12.56 concerning Proprietary Schools (Basic Standards) without changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8968).

The new section to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

Comments were received from the Career Colleges and Schools of Texas organization. Comments consisted of recommendations for re-organizing certain sections of the proposed amendments for purposes of clarity and simplicity. The agency agreed with the recommendations.

The new section to the rules is adopted under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

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

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Subchapter C. Operational Provisions

19 TAC §12.80, §12.81

The Texas Higher Education Coordinating Board adopts amendments to §12.80 and §12.81 concerning Proprietary Schools (Operational Provisions) with changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8968).

The amendments to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

Comments were received from the Career Colleges and Schools of Texas organization. Comments consisted of recommendations for re-organizing certain sections of the proposed amendments for purposes of clarity and simplicity. The agency agreed with the recommendations and changes were made accordingly.

The amendments to the rules are adopted under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

§12.80. Exemption from Texas Education Code, Chapter 132.

(a) An institution which requests and is granted exemption by the Texas Workforce Commission from Texas Education Code, Chapter 132, may not operate under the provisions of this chapter. Upon becoming exempt, a degree-granting institution must immediately:

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

(b) (No change.)

§12.81. Withdrawal of Authorization to Grant Degrees by Board Action.

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

(d) Degree-granting authorization is automatically withdrawn if, after receiving 60 days advance notification of the annual fee amount and the date upon which the fee is due, an institution fails to remit the fee by the due date. Authorization to grant degrees may be reinstated by the commissioner upon receipt of the established reinstatement fee.

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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19 TAC §12.82

The Texas Higher Education Coordinating Board adopts new §12.82 concerning Proprietary Schools (Operational Provisions) without changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8969).

The new section to the rules will define and clarify terms; incorporate specific programmatic and institutional standards into the rules; facilitate enforcement of appropriate minimum standards; and facilitate implementation of the on-going degree program review process.

Comments were received from the Career Colleges and Schools of Texas organization. Comments consisted of recommendations for re-organizing certain sections of the proposed amendments for purposes of clarity and simplicity. The agency agreed with the recommendations.

The new section to the rules is adopted under Texas Education Code, Chapter 61 and Section 132.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

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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James McWhorter
Assistant Commissioner for Administration
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Chapter 17. Campus Planning

Subchapter B. Application for Approval of New Construction and Major Repair and Rehabilitation

19 TAC §17.45

The Texas Higher Education Coordinating Board adopts amendments to §17.45 concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Energy Conservation Projects) without changes to the proposed text as published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 8969).

The 75th Legislature modified Section 51.927 of the Texas Education Code, dealing with energy performance contracting. One of the modifications requires that the Board, in making its recommendations regarding energy performance contracts, consider evaluations of the Texas Energy Coordination Council (TECC). The amendments to the rule will make it clear that TECC is included in the review process. Previously, energy conservation projects were only reviewed by the Coordinating Board and the State Energy Conservation Office (SECO) (formerly Energy Management Center). These projects now also require TECC in the review process. The rules are being amended to bring them in line with state law and our current procedures.

There were no comments received concerning the proposed amendments to the rules.

The amendments to the rule are adopted under Texas Education Code, Section 51.927(h), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Energy Conservation Projects).

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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James McWhorter
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Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations

Subchapter E. Migrant Education Program

19 TAC §89.71

The Texas Education Agency (TEA) adopts the repeal of §89.71, concerning the migrant education parent advisory council, without changes to the proposed text as published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9888). The section establishes requirements and procedures for the State Parent Advisory Council for Migrant Education. The repeal is necessary since the appointment of the State Parent Advisory Council for Migrant Education is authorized by the Texas Education Code, §7.055(b)(11), which allows the commissioner of education to appoint advisory committees. The State Parent Advisory Council for Migrant Education is currently authorized in 19 TAC §161.1003, Advisory Committees.

The Improving America's Schools Act of 1994, §1304(c)(3), requires the state and all local operating agencies receiving Title I Part C Migrant funds to carry out appropriate consultation with migrant parent advisory councils. To comply with this provision, the commissioner of education appoints a State Parent Advisory Council for Migrant Education to advise the

TEA in planning, implementing, and evaluating the state migrant education program.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Education Code, §7.055(b)(11), which allows the commissioner of education to appoint advisory committees; Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Public Law 103-382, Part C, §1304(c)(3), which requires the state and all local operating agencies receiving Title I Part C Migrant funds to carry out appropriate consultation with migrant parent advisory councils; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Section 167, which establishes a four-year sunset review cycle for all state agency rules.

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

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Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
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For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 73. Licenses and Renewals

22 TAC §73.7

The Texas Board of Chiropractic Examiners adopts new §73.7, relating to licenses and renewals, without changes to the proposed text as published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9889) and will not be republished. The new section relates to approval of sponsors of continuing education courses and the courses themselves. The Texas Chiropractic Act, Texas Civil Statutes, Article 4512b §8b(c) requires the board to establish a continuing education program for licensed chiropractors. By rule, the board must develop a process to evaluate and approve continuing education courses. Section 73.7 sets out the board's current guidelines for sponsors and prescribes the application process for board approval for courses and sponsors, approved sponsors, criteria for approved courses, including quality of content and presenters, approved topics, sponsor responsibilities, including verification of attendance and record keeping, periodic board evaluation of sponsors and courses, and approval revocation for failure to comply with board requirements. The board also changed the current annual $100 fee per sponsor for processing applications to $25 per course. The board has amended its fee schedule in §75.7 to reflect the change in fee, simultaneously with this rulemaking. The board adopts this change in the fee from a sponsor basis to a course basis, because it more accurately reflects the source of the administrative costs of this program, that is, the actual time and expense for processing each application. The board by the Chiropractic Act is charged with setting reasonable and necessary fees sufficient to defray the costs of administering the various programs required under the Act. The current sponsor basis does not take into account the actual amount of work and cost to the agency of processing a single application for each course. More time and expense will be incurred for sponsors with more than one course and less time for sponsors with fewer courses. It makes more sense to compute the fee necessary for this program based on the processing of each application for each course. Through §73.7, sponsors and licensees will be provided better notice of the board's requirements and process for approving sponsors and continuing education courses, and the board will be able to recoup its costs for administering the course evaluation and approval function of its continuing education program. Moreover, continuing education sponsor will be recharged a reasonable fee necessary to defray the cost of this program and which more accurately reflects the costs associated with their transactions with the agency.

No comments were received concerning the proposed new section.

The new rule is adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, §8b, which the board interprets as authorizing it to adopt rules to develop a process to evaluate and approve continuing education courses, and §11, which the board interprets as authorizing it to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Chiropractic Act, including this part of its continuing education 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.

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Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305–6709

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Chapter 75. Rules of Practice

22 TAC §75.7

The Texas Board of Chiropractic Examiners adopts an amendment to §75.7(a), relating to board fees, without changes to the proposed text as published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9891) and will not be republished. The current fee schedule in §75.7(a) is amended to change the application fee for registering continuing education courses from a $100 per year for each sponsor to $25 per year for each course. The board adopts this change in the fee from a sponsor basis to a course basis, because it more accurately reflects the source of the administrative costs of this program, that is, the actual time and expense for processing each ap-

plication. The board by the Chiropractic Act is charged with setting reasonable and necessary fees sufficient to defray the costs of administering the various programs required under the Act. The current sponsor basis does not take into account the actual amount of work and cost to the agency of processing an application for each course. More time and expense will be incurred for sponsors with more than one course and less time for sponsors with fewer courses. It makes more sense to compute the fee necessary for this program based on the processing of each application for each course. The amendment will enable the board to recoup its costs for administering its continuing education course evaluation and approval program and will ensure that those who must pay the fee are charged a reasonable fee necessary to defray the cost of this program.

No comments were received concerning the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, §8b, which the board interprets as authorizing it to develop a process to evaluate and approve continuing education courses, and §11, which the board interprets as authorizing it to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Chiropractic Act, including this part of its continuing education 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 16, 1998.

TRD-9817581
Gary K. Cain, Ed. D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 6, 1998
Proposal publication date: October 2, 1998
For further information, please call: (512) 305–6709

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Chapter 79. Provisional Licensure

22 TAC §79.1, §79.3

The Texas Board of Chiropractic Examiners adopts an amendment to §79.1(a)(2) and new §79.3, relating to provisional licensure, without changes to the proposed text as published in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9892) and will not be republished. The Chiropractic Act, Texas Civil Statutes, Article 4512b §9(a)(2) requires an applicant for a provisional license to have passed a national or other examination relating to chiropractic and recognized by the board. Section 79.1(a)(2) presently recognizes only Parts I, II, III and physiotherapy of the National Board of Chiropractic Examiners Examination in satisfaction of this statutory requirement. By this amendment, the board recognizes the National Board of Chiropractic Examiners (NBCE) Special Purposes Examination for Chiropractic (SPEC) or Parts I, II, III and physiotherapy. According to the Fall, 1998 NBCE's Examination Information booklet, the SPEC exam is "designed to assess licensed or previously licensed chiropractic practitioners in areas reflecting clinical conditions encountered in general practice." One of its purposes can be to satisfy state to state reciprocity examination requirements. Chiropractors who apply to take the SPEC examination must have been licensed at least two years prior to the NBCE deadline, as well as hold a degree in chiropractic from a college whose students or graduates are eligible to take the NBCE exams, according to the NBCE. The booklet states: "The SPEC test materials includes clinical case presentations which require that the examinee be able to demonstrate the appropriate clinical understanding and judgments required in unsupervised general chiropractic practice." Two hundred multiple choice questions focus on application of general knowledge and understanding during patient evaluations and management of clinical cases typifying various conditions encountered in practice. It is the board's opinion that the SPEC test is an appropriate test to recognize for provisional license purposes because it is designed to test the present competency of a licensed chiropractic in a clinical setting. Testing is just one element required in approving an out-of-state licensed chiropractor for licensure in Texas. The SPEC test will ensure that competent out-of-state chiropractors are admitted to practice in Texas, and will screen out those whose experience and/or training is inadequate. The public will have continued assurance that only qualified persons are licensed to practice in this state, while at the same time licensure will be available to out-of-state chiropractors who are currently in good standing in another jurisdiction and are otherwise qualified for provisional licensure, but were licensed prior to the time parts of the national examination was offered.

The board also adopts new §79.3 setting out that the board may refuse to issue a provisional or regular license, under §9 of the Chiropractic Act, if an applicant has a criminal conviction, as provided in Texas Civil Statutes, Articles 6252-13c and 6252-13d. Those statutes require the board to consider certain factors when evaluating an applicant with a criminal background. Section 79.3 provides notice to potential applicants of the applicability of these laws to their applications.

No comments were received concerning the proposed amendment and new section.

The amendment and new rule are adopted under Texas Civil Statutes, Article 4512b, §4(c), §4a, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and §9, which the board interprets as authorizing it to grant a provisional license to eligible applicants and to determine which examinations it will recognize as a requirement for a provisional license, and Texas Civil Statutes, Articles 6252-13c and 6252-13d, which the board interprets as requiring the board to consider the criminal history of an applicant for licensure.

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 16, 1998.

TRD-9817582
Gary K. Cain, Ed. D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 6, 1998
Proposal publication date: October 2, 1998
For further information, please call: (512) 305–6709

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Part XI. Board of Nurse Examiners

Chapter 222. Advanced Practice Nurses with Limited Prescriptive Authority

22 TAC §222.1, §222.4

The Board of Nurse Examiners adopts amendments to §222.1, concerning Definitions with changes and §222.4 concerning Functions without changes to the proposed text as published in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10253). Therefore §222.4 will not be republished.

The amendments are being adopted to bring the Board's rules into compliance with statutes and expand the practice scope of advanced practice nurses. During the 75th Legislative Session, HB 2846 was passed relating to the provisions of health care services by advanced practice nurses including expansion of sites for limited prescriptive authority and extension of the timeline required for physician site visits in medically underserved sites. A submission error was made in §222.1, Definitions and a notice of correction was published in the November 6, 1998, issue of the *Texas Register*(23 TexReg 11486). The error occurred in definition number (10) which should have been deleted. Definition number (16) should be number (10); thereby ending the definitions at number (15). The Board is adopting the amendment with this correction.

These amendments will bring the Board's Advanced Practice Nursing rules into agreement with the Board of Medical Examiner's rules for physician supervision for limited prescriptive authority.

No comments were received.

The amendments are adopted under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and Article 4514, §8, which provides the Board of Nurse Examiners the authority and power to adopt rules for approval of a registered nurse to practice as an advanced practice nurse. Advanced Practice Nurses Limited Prescriptive Authority §222

§222.1. Definitions.

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

(1) Advanced practice nurse (APN) formerly known as Advanced Nurse Practitioner (ANP) - A registered professional nurse, currently licensed in the State of Texas, who is prepared for advanced nursing practice by virtue of knowledge and skills obtained through a post-basic or advanced educational program of study acceptable to the board. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services. APNs include Nurse Practitioners, Nurse Midwives, Nurse Anesthetists and Clinical Nurse Specialists.

(2) Board - The Board of Nurse Examiners for the State of Texas.

(3) Carrying out or signing a prescription drug order - Completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an APN after the APN has been designated with the Board of Medical Examiners by the delegating physician(s) as a person delegated to sign prescriptions.

(4) Dangerous drug - A device or a drug that is unsafe for self medication and that is not included in schedules I-V or penalty groups I-IV of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(5) Eligible sites - Sites serving medically underserved populations; a physician's primary practice site; or facility based practices at a licensed long term care facility or hospital.

(6) Facility-based practice - An APN's practice which is based at a licensed hospital or licensed long term care facility.

(7) Health Professional Shortage Area (HPSA) - An area, population group, or facility designated by the United States Department of Health and Human Services (USDHHS) as having a shortage of primary care physicians.

(8) Medically Underserved Area (MUA) - An area or population group designated by the USDHHS as having a shortage of personal health services; or an area defined by rule adopted by TDH that is based on demographics specific to this State, geographic factors that affect access to health care, and environmental health factors.

(9) Pharmacotherapeutics - A course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(10) Physician's primary practice site - Any one of the following:

(A) the practice location where the physician spends the majority of his/her time;

(B) a licensed hospital, a licensed long-term care facility or a licensed adult care center where both the physician and the APN are authorized to practice, a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32, or an established patient's residence; or

(C) where the physician is physically present with the APN.

(11) Protocols/or other orders - Written authorization to initiate medical aspects of patient care which are agreed upon and signed by the APN and the physician, reviewed and signed at least annually, and maintained in the practice setting of the APN. Protocols/or other orders shall be defined to promote the exercise of professional judgement by the APN commensurate with his/her education and experience. Such protocols/or other orders need not describe the exact steps that the APN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs which may be prescribed rather than list specific drugs.

(12) Rural health clinic - A clinic designated as a rural health clinic under the Rural Health Clinic Services Act of 1977 (Public Law No. 95-210); the designation is made by the Health Care Financing Administration (HCFA) of the USDHHS.

(13) Shall and must - Mandatory requirements.

(14) Should - A recommendation.

(15) Sites serving medically underserved populations - A medically underserved area, a health professional shortage area, a rural health clinic, a public health clinic or family planning clinic under contract with the Texas Department of Health (TDH) or Texas Department of Human Services (TDHS) or other site approved by the TDH.

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, 1998.

TRD-9817438
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: November 30, 1998
Proposal publication date: October 9, 1998
For further information, please call: (512) 305–6816

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Part XIV. Texas Optometry Board

Chapter 271. Examinations

22 TAC §271.1

The Texas Optometry Board adopts an amendment to §271.1, without changes to the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9681).

Section 277.1 is required in order to inform licensees and general public of the correct and applicable legal cite.

No comments were received regarding adoption of the amendment.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.01 and §2.14. The Texas Optometry Board interprets §3.01 as authorizing the entry level examination for licensure. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry.

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

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 16,1998.

TRD-9817583
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: December 6, 1998
Proposal publication date: September 25, 1998
For further information, please call: (512) 305–8502

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Chapter 279. Interpretations

22 TAC §279.17

The Texas Optometry Board adopts new §279.17, without changes to the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9682).

In response to a request from the Texas Ophthalmological Association, the agency scheduled a public hearing pursuant to the Government Code, §2001.029. Notice was published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11486). At the public hearing, comments were received from the Texas Ophthalmological Association, which spoke in opposition to the proposed rule, and The Texas Optometric Association, which spoke in favor of the proposed rule. The Texas Ophthalmological Association also submitted written comments to the agency. No additional comments were received.

The Texas Ophthalmological Association commented that the agency, in defining "surgery" in the same manner as defined in an Opinion of the Attorney General, was improperly interpreting the Optometry Act. The Association presented various legal arguments that the commentor believed created doubt as to the correctness of the Opinion. These arguments questioned the Attorney General's reliance on cases cited in the Opinion and the interpretation of the effect of a section of the Medical Practice Act.

The agency disagrees with these comments. The agency is not aware of any legal authority questioning the correctness of the Attorney General's Opinion. The language of the Opinion shows that the Attorney General considered these issues when issuing the Opinion. Therefore the agency believes that the definition in the proposed rule is legally correct.

The Texas Ophthalmological Association commented that the proposed rule is too narrow and will not provide the proper guidance to the agency when faced with complaints against optometrists. The commentor presented several specific fact questions that it argues are not easily answered by the proposed rule.

The agency disagrees with these comments. The definition will provide the additional guidance necessary for the agency to make decisions regarding disciplinary measures. Any complaint alleging violation of the Act will continue to be handled on a case by case basis, examining all the information regarding the complaint, to determine whether the respondent violated the provisions of the Act.

The Texas Ophthalmological Association commented that the proposed rule will permit other licensing boards to make their own determination as to whether that board's licensing act was being violated, and that therefore the rule is beyond the scope of the agency's authority.

The agency disagrees with these comments. The agency is only authorized to regulate the practice of optometry and therapeutic optometry. The new rule is proposed only to interpret the regulation of the licensees of the agency, as well as to prevent the unauthorized practice of the procedures authorized by the Optometry Act.

The Texas Ophthalmological Association commented that the proposed rule does not define "surgery" in the same exact manner as defined in the optometry acts of other states. The Association submitted its own language, stating that only

this language properly defines surgery and includes laser operations within that definition.

The agency disagrees with these comments. The agency is proposing a rule to interpret the language chosen by the legislature. The agency has no legal authority to draft statutory language or suggest such language to the legislature. The definition of "surgery" in the proposed rule neither expands or contracts the authority granted by the Optometry Act. Since the Act itself specifically addresses laser operations by permitting therapeutic optometrists to treat the eye and adnexa without the use of "laser surgery," the rule does not need to address this area.

The Texas Optometric Association commented that the proposed rule was necessary and comported with the definition of "surgery" advanced in the Opinion of the Attorney General.

The agency agrees with these comments.

The proposed rule defines the term "surgery," which is not specifically defined in the Optometry Act. By defining the term, the proposed rule will provide specific guidance to the agency's licensees concerning the extent of statutorily authorized procedures, and in turn insure that the patients of licensees only receive those procedures authorized by statute.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.02 and §2.14. The Texas Optometry Board interprets §1.02 as defining the procedures that may be employed by therapeutic optometrists. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry.

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

Filed with the Office of the Secretary of State on November 16,1998.

TRD-9817584
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: December 6, 1998
Proposal publication date: September 25, 1998
For further information, please call: (512) 305–8502

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TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

The Interagency Council on Early Childhood Intervention (ECI) adopts amendments to §§621.1-621.3, 621.5, 621.61 and 621.63, concerning Early Childhood Intervention. Sections 621.1, 621.2, 621.5, 621.61 and 621.63 are adopted without changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9248) and will not be republished. Section 621.3 is adopted with a non-substantive change. In §621.3(c)(1), there is a reference to Article V, when in fact the proper reference is Article IX. The section will be republished.

The amendments are adopted to reflect changes in statutory revisions by the 75th Legislature. Throughout the sections the word "council" was changed to the word "board". Elsewhere in this issue of the *Texas Register*, the ECI has adopted the review of the following sections: 621.1-621.3, 621.5 and 621.61-621.64. This review is in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

No comments were received regarding adoption of the amendments.

Subchapter A. Conduct of Board Meetings

25 TAC §§621.1–621.3, 621.5

The amendments are adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with the Code.

§621.3. Board Procedures.

(a) Notice of meetings.

(1) (No change.)

(2) A copy of the notice will be sent to each board member prior to the meeting.

(3) (No change.)

(b) Transaction of business.

(1) All meetings will be conducted according to Robert's Rules of Order except that the chairperson may vote on any action as any other member of the board.

(2) (No change.)

(c) Compensatory per diem.

(1) Members who are parents of children with developmental delay are entitled to reimbursement of expenses for meals, lodging and transportation as established in Article IX of the current Texas State Appropriations Act. Members who were appointed as parents of children with developmental delay are entitled to reimbursement for child care necessitated by their participation in an official capacity as a board member.

(2) All members are entitled to reimbursement for expenses related to attendant care necessitated by their participation in an official capacity as a board member.

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 16, 1998.

TRD-9817587
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Effective date: December 6, 1998
Proposal publication date: September 11, 1998
For further information, please call: (512) 424–6750

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Subchapter D. Early Childhood Intervention Advisory Committee

25 TAC §621.61, §621.63

The amendments are adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with the Code.

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

Filed with the Office of the Secretary of State on November 16, 1998.

TRD-9817588
Donna Samuelson
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Effective date: December 6, 1998
Proposal publication date: September 11, 1998
For further information, please call: (512) 424–6750

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 7. Inspections for Windstorm and Hail Insurance

28 TAC §5.4604

The Commissioner of Insurance adopts new 28 TAC §5.4604 concerning the appointment of Texas licensed professional engineers as qualified windstorm inspectors. The new section provides the necessary and appropriate inspection procedures and a new application form for a Texas licensed professional engineer to apply to be appointed and approved as a qualified inspector to perform building inspections for the certification of structures to be insured for windstorm and hail insurance through the Texas Windstorm Insurance Association (the Association). Section 5.4604 is adopted with changes to the proposed text as published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6691) and with changes to the proposed form which the section adopts by reference, all of which are more particularly described below. The amended section was considered by the Commissioner of Insurance in a public hearing on October 26, 1998, Docket No. 2369.

The new section concerns the appointment of Texas licensed professional engineers as qualified windstorm inspectors. Article 21.49 §6A, Insurance Code, specifies building code requirements and inspection or approval procedures for the certification of structures to be insured for windstorm and hail insurance through the Texas Windstorm Insurance Association. Structures located in the designated catastrophe areas that are constructed or repaired or to which additions are made on or after January 1, 1988; and structures located in specified designated catastrophe areas in Harris County that are constructed or repaired or to which additions are made on and after March 1, 1996, for portions of the cities of Seabrook and La Porte; June 1, 1996, for the city of Morgan's Point; and April 1, 1997, for portions of the cities of Shoreacres and Pasadena; must be certified by the commissioner of insurance to be in compliance with the Association's building code requirements contained in the Association's plan of operation as evidence of insurability of the structure for windstorm and hail insurance provided through the Association. The certification of a structure requires an inspection of the structure be made by a qualified inspector who is a person determined by the commissioner to be qualified to perform inspections because of training or experience. Qualified inspectors must be approved and appointed or employed by the commissioner to perform building inspections. The new procedures and the application form are necessary to provide specific procedures that must be followed for the inspection and notification of compliance of a structure by a Texas licensed professional engineer as a qualified inspector approved and appointed by the commissioner in order for the commissioner to issue a certificate of compliance for a structure as the evidence of insurability for windstorm and hail insurance provided through the Association; to ensure that Texas licensed professional engineers conducting the windstorm inspections are practicing engineering within their field of expertise and/or are qualified to design, inspect and note compliance of structures for wind resistance in high wind areas; and to ensure that the consumers of Texas are adequately and fairly served by engineers who are designing, inspecting and notifying the department of compliance of structures in the designated catastrophe areas that are to be insured for windstorm and hail insurance by the Association. In Fiscal Year 1997, engineers certified seventy-one percent (71%) of all new structures located in the designated catastrophe areas as meeting the Association's building code requirements for insurability for windstorm and hail insurance through the Association. To date in Fiscal Year 1998, eighty percent (80%) of new structures are being certified by engineers. The volume of inspections conducted by and certifications issued by Texas licensed professional engineers requires the commissioner to establish a reasonable process for approving and appointing such engineers as qualified inspectors and to establish reasonable procedures that can be consistently applied in the inspecting of and notifying that a structure is in compliance with the building code requirements of the Association. To continue to allow the notification of compliance of a structure by any and all Texas licensed professional engineers without the appointment of each engineer as a qualified inspector and without standardized inspection and compliance procedures is contrary to the uniform inspection program contemplated in Article 21.49 §6A, Insurance Code. In addition, the standardized inspection and compliance procedures ensure that structures are constructed to meet the building code requirements of the Association. The new section applies to all inspections conducted on or after February 1, 1999. In response to comments by the Texas Board of Professional Engineers, the Texas Society of Professional Engineers, and the Texas Association of Builders, the department has amended the rule as follows: removed the requirement that an engineer be a "structural" engineer; added a provision that identifies the hearings process upon disapproval of an appointment; added a section requiring the commissioner to notify the Texas Board of Professional Engineers of any action taken against an engineer as a qualified inspector; clarified that the department may "require" random submissions of sealed plans and calculations; removed the requirement that the engineer submit an inspection application form prior to the actual commencement of construction; clarified that the engineer's seal on the application form be a stamp

or ink replica; and changed the application date to February 1, 1999. The department has also added a definition for "engineer", has corrected typographical errors in the text of the new section, has made grammatical and editorial changes in the application form, and has reflected the amended titles of 28 TAC §§5.4007 and 5.4008 which sections are referenced in the text of the new section and which amendments were adopted after the publication of the rule proposal.

New §5.4604 provides the necessary and appropriate inspection procedures and adopts by reference a new application form for a Texas licensed professional engineer to apply to be appointed and approved as a qualified inspector to perform building inspections for the certification of structures to be insured for windstorm and hail insurance through the Texas Windstorm Insurance Association. New subsection (a) of the rule outlines the purpose and scope of the new section. New subsection (b) of the rule defines certain terms used in the new section. New subsection (c) of the rule allows for the appointment by the commissioner of licensed professional engineers as qualified inspectors to perform building inspections for the purposes of establishing if a building or structure is eligible for windstorm insurance through the Association. New subsection (d) of the rule outlines the qualification requirements for appointment of a Texas licensed engineer as a qualified inspector. New subsection (e) of the rule specifies the information on the application to be submitted to the department on a form developed by the department and prohibits engineers from conducting windstorm and hail inspections pursuant to Article 21.49 §6A until the appointment has been made. New subsection (f) of the rule provides for the cancellation or revocation of the appointment and for sanctions in lieu thereof if the holder or possessor of the approval and appointment is found to be in violation of, or to have failed to comply with, any provisions of the section or any other rule or regulation of the department or any statute enacted to govern inspections of structures to be insured for windstorm and hail insurance through the Association. New subsection (g) of the rule outlines the responsibilities of the Texas licensed professional engineer in conducting windstorm inspections, including that the engineer must design, inspect, and prepare plans and calculations for each building or structure in accordance with wind load requirements of construction standards adopted by the commissioner or, alternatively, that the engineer may inspect in accordance with the prescriptive building code or construction guide adopted by the commissioner without preparing the plans and structural calculations for the building or structure. The subsection further requires statements of compliance bearing the seal of the professional engineer and submitted to the department on forms developed by the department. New subsection (h) of the rule outlines a program of oversight by the department, including random periodic audits of building or structures and further provides for sanctions for non-compliance. New subsection (i) of the rule adopts by reference the application form to be submitted by the engineer requesting approval by the commissioner for appointment as a qualified inspector.

Comment: Two commenters indicate that engineers are almost never in a position to control the start of construction and it is unreasonable to hold the engineer responsible for submitting forms prior to commencement of construction. The commenters recommend that the burden for submitting the application be placed with the owner or builder.

Agency Response: The department agrees that the engineer may not have control of the start date of construction; however, for purposes of oversight, the department must know the start date of construction if an engineer is to be involved in the inspection of the structure. We agree that the builder/owner should have the responsibility of notifying the department of the commencement of construction and whether the structure is to be inspected by the department or if an engineer is to inspect the structure. We will address the requirement for an application prior to construction in the manual rules for windstorm inspections which will be proposed at a later date in a separate rule.

Comment: Several commenters state that the Texas Board of Professional Engineers (TBPE) does not license engineers by discipline such as "structural" or "civil" but rather as "professionals" who must define their area of practice based on their individual education, experience or training; therefore, this text should be removed.

Agency Response: The department agrees with these comments, and has removed the requirement. An engineer must only attest to experience, education or training in design in high wind areas.

Comment: One commenter indicates the rule should be amended to state that:

a. the department will refer engineers to the TBPE when suspicions arise concerning the performance of their work; and

b. the department will refuse to accept or process any further submittals from any engineer that has been referred to the TBPE until the issue has been resolved by the TBPE; and

c. the department may initiate further sanctions by the commissioner after the TBPE has concluded its investigations and sanctioning procedures from violations of the rules of professional conduct.

The commenter further states the department may wish to amend the rule to allow the commissioner to cancel an appointment for any sanction issued by the TBPE in a matter concerning the department.

Another commenter indicates investigation, discipline and penalties against engineers should be left to the TBPE instead of creating another unnecessary regulatory scheme.

Agency Response: The department agrees in part and disagrees in part. The department agrees that it should refer engineers to the TBPE when action has been taken by the department concerning their performance as a qualified inspector, and the department has amended the proposed rule to require the commissioner to refer such a matter to the TBPE. The department disagrees with the other comments because for purposes of the windstorm inspection program, the commissioner must have the ability to enforce the rules and regulations of this agency and to determine actions to be taken because of violations of such rules and regulations without awaiting actions of another agency. The reasons for revoking or canceling an appointment need not be placed in a rule since such a procedure is subject to a hearing process. Although the department agrees that the TBPE and the department should, when possible, work in harmony, the department also believes that it is important that actions of the commissioner not be contingent upon actions of the TBPE.

Although the department disagrees with several of these suggested changes to the proposed rules, the department agrees that it is important to work in harmony with the TBPE whenever possible, and as contemplated in meetings with the TBPE, the department intends to have an open working relationship with the TBPE.

Comment: One commenter recommended wording be revised to clearly state that the department may randomly require sealed plans and calculations in lieu of the phrase "request random submissions", clarifying that such submissions are not voluntary.

Agency Response: The department agrees and has amended the rule's oversight section stating that the department may "require" random submissions.

Comment: One commenter recommends that the department require the engineer to use a rubber stamp or other seal that leaves an ink replica, in lieu of impression seals.

Agency Response: The department agrees and has amended the application form and other forms accordingly to require the use of a rubber stamp or ink replica.

Comment: One commenter states that based on the rule, engineers would either:

a. increase the fees for services to cover additional time and effort required to follow the new procedures and document each project as outlined, or

b. discontinue offering these services altogether. The commenter further states disagreement that there would be no significant impact to the businesses comprising the building industry. At a minimum, the costs for professional services for certification of design and construction with the windstorm resistant code would be higher than the fees charged under the current system. Engineers do not compete for residential inspection services because their fees are higher than the charges by TDI staff.

Agency Response: While the department appreciates the concerns expressed by the commenter regarding actions engineers may take regarding the implementation of the new rule, the department does not agree with the commenter that the rule imposes new procedures which will increase the engineer's fee for services. The new rule does not impose any additional inspection requirements that are not already imposed on engineers under the statute and the current windstorm inspection process. Further, the department's rule proposal analyzed the impact of the new rule's application process and procedures concerning copying and transmission of plans and calculations. The department concluded that the new rule should not significantly increase the inspection charge and pointed out that any increased charge would likely be governed by marketplace competition. Although this new rule applies to inspections conducted by an engineer, the department will continue to offer inspection services based on the current department fee schedules; therefore, the building industry is not mandated to be subjected to increased fees. If a builder opts to use an engineer who chooses to increase his fee for service, this would not be as a direct result of the rule.

Comment: One commenter states that it appears the department is attempting to overlap the authority given the TBPE by the Texas Engineering Practice Act. The department does not need to screen engineers for qualified designers and inspectors. A TBPE complaint system is already in place and the department will not need to register engineers in order to disqualify those who should not be performing these services. The commenter further states the department is attempting to regulate an industry without actually employing any of the individuals. Another commenter states that the paperwork is duplicative and unnecessary when engineers are already licensed and regulated by another state agency.

Agency Response: The department does not agree with the statement that it is attempting to overlap the authority given the TBPE by the Texas Engineering Practice Act. The Texas Insurance Code clearly mandates that the commissioner must approve and appoint inspectors if inspectors are not employed by the department and provides the authority to take certain actions as outlined in this new rule. Such authority does not overlap the authority of the TBPE. The Texas Engineering Practice Act governs the conduct of engineers as that conduct relates to the licensing of engineers in Texas. The department's authority addresses only the actions it may take in relation to an individual who is appointed to conduct windstorm inspections and to notify compliance to the department. This new rule does not provide any greater authority to the commissioner than currently exists without this rule. The new rule simply outlines the appointment process and the requirements for inspecting structures and submitting notices of compliance to the department.

Comment: Two commenters indicate the rule does not address the issue of whether licensed engineers or non-licensed individuals would be policing the designers and inspectors, and they question whether a Texas Department of Insurance inspector can withdraw certification by an engineer.

Agency Response: The department agrees that the rule does not directly address this issue in its oversight provisions; however, the department's licensed professional engineers will oversight an engineer's design and inspection of a structure. In instances where an engineer is only inspecting to the prescriptive building code or construction guide, then a non-licensed individual may oversight that inspection, since design and calculation are not required when using the prescriptive building code or construction guide.

Comment: One commenter states that the rule does not contemplate how a builder or potential homebuyer will know whether an engineer has been appointed by the department and questions whether the department will issue a monthly list of appointed engineers or issue an appointment number to the engineer so the public will know that the engineer is appointed by the department. The commenter appears to believe this will create confusion to the consumer.

Agency Response: The department agrees with the commenter that the rule does not address general notification of an appointment of an engineer as a qualified inspector. The department does intend to maintain a listing of appointed engineers that will be updated periodically and will be supplied to any interested party. The department does not agree that this will be confusing to consumers or builders.

Comment: One commenter indicates that engineers have been trained as professionals and that a builder hires an engineer for a project because the homebuyer wants particular features in the home that are not within the prescriptive building code. The engineer uses professional judgment to accommodate these types of changes. The commenter says the rule allows the

department staff to trump the professional judgment of the engineer and dictate how engineers are to do their work, and that the rule also dictates the number of inspections to be completed by the engineer. The commenter says the number of inspections should be left to the professional judgment of the engineer so that the inspection schedule best suits the project.

Agency Response: The department disagrees with the commenter. Although as with any profession, there is room for the use of professional judgment by engineers, professional judgment must have a basis. Engineering is the use of science and mathematics to solve specific problems. The department does not believe engineers make judgment calls without engineering formulas and calculations that will support those judgments. They are based on nationally recognized standards and references. The prescriptive building code is developed based on the assumption that a building will be constructed to meet all the necessary requirements within the prescriptive code in order to achieve the necessary wind resistance. Once a deviation from the prescriptive building code is made to any part of the building, the department believes it will impact the wind resistive qualities of the entire building. If engineers are making changes on portions of buildings without taking into consideration the effect of those changes on the entire structure, then the commenter is correct that the department will raise questions regarding that judgment call of the engineer. Where homebuyers want particular changes to a home that do not fit within the prescriptive building code requirements, then the entire structure should be designed by an engineer. As to the number and time of inspections, the department does not believe that these are unreasonable and would assume an engineer would be inspecting a structure during the four major phases of construction.

Comment: One commenter states that one section of the rule suggests that it requires appointment to inspect structures while another section requires the engineer to design, inspect and prepare plans, meaning that engineers doing design work are also subject to the rule.

Agency Response: The department disagrees. This rule is designed for one reason: to appoint qualified inspectors who are notifying the department that a structure meets the building code requirements for purposes of obtaining insurance through the Association. If an engineer is notifying that a structure is in compliance, then the engineer will be responsible for that notification, including any designing and inspection work.

Comment: One commenter indicates the rule does not make provisions for a phase-in of the appointment requirement leaving homebuyers and builders without appointed engineers to do the job. The commenter says there should be a six-month grace period to allow time for the department to conduct the necessary outreach to engineers along the coast so that the engineers know that they must apply for appointment, and the department can process the paperwork.

Agency Response: The department agrees to a phase-in period and has provided that the rule apply to all inspections conducted by engineers on or after February 1, 1999. This will allow sufficient time for the engineer submitting an application to be approved and appointed by the commissioner and to be notified, and should not cause any disruption in the inspection process for engineers. Until such time, an engineer may continue to conduct windstorm inspections under article 21.49, section 6A and submit notice of compliance to the department. The department disagrees with the commenter regarding a six-month grace period. The department has a complete mailing list of all engineers who are currently certifying structures on the coast and will immediately mail a notice and an application to these engineers advising them of the requirements and the time frames. The application is simple to complete, and processing of the applications by the department will not create a significant burden in the functioning of the inspection process.

Comment: One commenter suggested the rule recognize architects as design professionals qualified to conduct inspections.

Agency Response: The department disagrees at this time because to amend the rule adding architects as eligible for appointment as qualified inspectors is a substantive change which would require republication of the rule to allow comments on the change. The department has no objections to exploring the possible inclusion of architects for appointment as qualified inspectors as part of a future rulemaking; however, the department does not agree to amend the rule at this point in time. The department will work with the Texas Society of Architects and the Texas Board of Architects to determine if the necessary qualifications and experience are present that would qualify architects to be appointed as qualified inspectors which would allow an architect to design, inspect, and prepare plans for a structure located in the coastal area.

Comment: One commenter points out that the rule does not provide an appeals process if an engineer is denied appointment.

Agency Response: The department agrees and has added a provision in the rule whereby an applicant who has been disapproved for appointment may request a hearing.

Comment: One commenter expressed support for the rule and commended the commissioner's staff in proposing the rule. The commenter noted that his organization has passed rules which the department's new rule complements, and he feels that the new rule will be a step forward for homeowners. The commenter stated that his organization will work to educate the public in awareness of the new rule.

Agency Response: The department agrees that the new rule will be a step forward for homeowners and appreciates the comments. The department will take steps to notify engineers of the requirements of the new rule and will also encourage good media and other coverage to increase awareness of the new rule.

For: Texas Board of Professional Engineers, Texas Society of Professional Engineers, and Texas Society of Architects.

Against: Texas Association of Builders.

This section is adopted pursuant to the Insurance Code Articles 21.49 and 1.03A. Article 21.49 §6A specifies building code requirements and inspection or approval procedures for windstorm and hail insurance through the Texas Windstorm Insurance Association. All structures located in the designated catastrophe areas that are constructed or repaired or to which additions are made on or after January 1, 1988; and structures located in specified designated catastrophe areas in Harris County that are constructed or repaired or to which additions are made on and after March 1, 1996, for portions of the cities of Seabrook and La Porte; June 1, 1996, for the city of Morgan's Point; and April 1, 1997, for portions of the cities of Shoreacres and Pasadena; to be considered insurable property

for windstorm and hail insurance from the Association must be inspected or approved by the commissioner for compliance with the building specifications in the plan of operation of the Association. Article 21.49 §6A requires the commissioner to issue a certificate of compliance that is evidence of insurability of the structure by the Association and to promulgate rules and forms to effect the provisions of this section. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

§5.4604. Appointment of Engineers as Qualified Inspectors.

(a) Purpose and Scope. The purpose and scope of this section is to:

(1) provide procedures for the approval and appointment of a Texas licensed professional engineer to conduct inspections of structures and provide engineered analyses and designs, pursuant to the Insurance Code Article, 21.49 §6A, for compliance with building specifications in the plan of operation of the Texas Windstorm Insurance Association and any other building specifications promulgated by the Texas Department of Insurance to determine insurability for windstorm and hail insurance covered by the Texas Windstorm Insurance Association and issue certifications of compliance for risks to qualify for insurability through the Texas Windstorm Insurance Association;

(2) establish qualifications for the appointment of Texas licensed professional engineers to conduct windstorm inspections;

(3) specify the responsibilities of an engineer performing windstorm inspections;

(4) outline the method of applying for appointment of a Texas licensed professional engineer to perform windstorm inspections;

(5) specify the oversight functions of the Department; and

(6) adopt by reference the application form to be submitted by the engineer requesting approval by the Commissioner for appointment as a qualified inspector.

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

(1) Commissioner - Commissioner of Insurance of the State of Texas.

(2) Department - Texas Department of Insurance.

(3) Manual - The Windstorm Inspection Manual as set forth in §5.4602 of this title (relating to Windstorm Inspection Manual).

(4) Qualified inspector - A person determined by the Commissioner to be qualified to perform building inspections pursuant to the Insurance Code Article 21.49 §6A, who must be approved and appointed by the Commissioner to perform building inspections for the purpose of establishing that a building or structure is eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association.

(5) Association - Texas Windstorm Insurance Association.

(6) Engineer(s) - a Texas Licensed Professional Engineer.

(c) Appointment of an Engineer as a Qualified Inspector. The Commissioner may appoint an engineer as a qualified inspector to perform windstorm inspections and shall be responsible for inspections pursuant to this section and the Insurance Code Article 21.49 §6A.

(d) Requirements for Appointment of an Engineer as a Qualified Inspector.

(1) The engineer shall be a licensed engineer with demonstrable experience, education or training in the design of building structures in high wind areas.

(2) The engineer shall affirm to the Commissioner through a sworn statement the engineer's qualifications pursuant to paragraph (1) of this subsection and shall also confirm in the sworn statement the currency and non-restricted status of the engineer's license through the Texas Board of Professional Engineers.

(e) Application for Appointment of an Engineer as a Qualified Inspector.

(1) The engineer shall submit to the Department a completed application form requesting approval by the Commissioner for appointment as a qualified inspector to conduct windstorm and hail inspections as outlined in this section and in Article 21.49 §6A of the Insurance Code. The application form shall be developed by and available from the Department. No engineer shall be approved and appointed by the Commissioner until the engineer's fully completed application form has been filed and reviewed by the Department. The engineer shall not, for the purposes of Article 21.49 §6A, conduct windstorm and hail inspections until formal action has been taken by the Commissioner to appoint the engineer as a qualified inspector.

(2) The application form shall contain at a minimum the name, address, and telephone number of the applicant; name, address and telephone number of employer; the Texas license number of the applicant; the applicant's field of expertise in engineering; schools or courses attended; experience in design of structures in high wind areas; and a sworn statement verifying qualifications and licensing.

(3) The Department shall notify the engineer by letter of the approval and appointment or disapproval of the appointment by the Commissioner of the engineer as a qualified inspector. Any letter of disapproval shall state the reasons for disapproval and shall notify the applicant that he or she has 30 days from the date of the letter of disapproval to make a written request for hearing. If a hearing is requested, the hearing will be granted and the procedures for a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, shall apply.

(f) Cancellation or Revocation of an Engineer's Appointment as a Qualified Inspector.

(1) After notice and opportunity for hearing, the Commissioner may cancel or revoke an approval and appointment made under this section if the holder or possessor of the approval and appointment is found to be in violation of, or to have failed to comply with, any provisions of this section or any other rule or regulation of the Department or any statute enacted to govern inspections of structures to be insured for windstorm and hail insurance through the Association. In lieu of cancellation or revocation, the Commissioner, upon determination from the facts that it would be fair, reasonable, or equitable, may order one or more of the sanctions specified in subparagraphs (A) - (D) of this paragraph.

(A) The Commissioner may order the suspension of the approval or appointment for a specific period, not to exceed one year;

(B) The Commissioner may issue an order directing the holder or possessor of the appointment to cease and desist from

the specified activity determined to be in violation of any provisions of this section or any rule or regulation of the Department or any statute enacted to govern inspections of structures to be insured for windstorm and hail insurance through the Association.

(C) The Commissioner may issue an order directing the holder or possessor of the appointment to remit within a specified time, a sum not to exceed $5,000, if the person approved and appointed is found by the Commissioner to have knowingly, willfully, fraudulently, or with gross negligence, signed or caused to be prepared an inspection report or sworn statement that contains a false, fictitious, or fraudulent statement or entry; or

(D) The Commissioner may order any other statutory sanction that may be enacted pursuant to the Insurance Code Articles 21.49 §6A, 1.10 and 1.10E.

(2) If it is found after notice and opportunity for hearing that any engineer approved and appointed by the Commissioner to conduct inspections pursuant to this section and Article 21.49 of the Insurance Code has failed to comply with an order issued by the Commissioner pursuant to this section or Articles 21.49, 1.10 or 1.10E of the Insurance Code, the Commissioner shall, unless the Commissioner's order is lawfully stayed, cancel the appointment.

(3) The Commissioner may informally dispose of any matter under this section by consent order or default.

(4) Revocation or suspension of an engineer's license issued by the Texas Board of Professional Engineers automatically cancels any approval and appointment made pursuant to this section.

(5) Pursuant to the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a, the Commissioner shall notify the Texas Board of Professional Engineers of any action taken against an engineer as a qualified inspector.

(g) Responsibilities of an Engineer Conducting Windstorm Inspections.

(1) The engineer shall comply with Article 21.49 §6A of the Insurance Code; §§5.4001, 5.4601, 5.4602, and 5.4603 of this title (relating to Plan of Operation and Inspections for Windstorm and Hail Insurance).

(2) The engineer shall design, inspect and prepare plans and structural calculations for a building or structure in accordance with the wind load requirements of the construction standards adopted by the Commissioner in the Association's plan of operation as adopted by reference in §§5.4007 and 5.4008 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998; however, the plans and calculations are not routinely required to be submitted to the Department for the issuance of a certification of compliance by the Department. The plans and calculations shall be documented by the engineer as meeting the wind load requirements of the construction standards adopted by the Commissioner and shall bear the seal of the engineer.

(3) Alternatively, the engineer shall inspect in accordance with the prescriptive building code or construction guide adopted by the Commissioner and notify the department that a building or structure complies with the prescriptive building code or construction guide without preparing the plans and structural calculations for the building or the structure. Inspection under the prescriptive building code or construction guide adopted by the Commissioner requires strict compliance with that code or guide with no modifications. Any modifications or deviations from the prescriptive building code or construction guide adopted by the Commissioner require the engineer to comply with paragraph (2) of this subsection.

(4) The engineer shall submit to the Department a building compliance form, developed by the Department, notifying the Department that the building or structure was erected, altered and/or repaired to meet the wind loads specified in the appropriate construction standards adopted by the Commissioner.

(5) The engineer shall be responsible for the inspection of each building or structure during each major phase of construction. Major phases of construction shall be the foundation stage, rough framing stage, final framing stage and installation of mechanical equipment. The engineer's employee(s) may assist in the conduct of the inspections for which the engineer is personally responsible.

(h) Oversight of Engineer Appointed as a Qualified Inspector.

(1) The Department shall maintain oversight of all aspects of the inspection and notification of compliance of buildings or structures by an engineer pursuant to Article 21.49 §6A of the Insurance Code and the requirements of this section.

(A) The Department may perform random periodic audits of buildings or structures in the course of construction for which an Application for Windstorm Building Inspection has been submitted to the Department by the engineer; or random periodic audits of buildings or structures which have been documented by the engineer as being in compliance with the wind loads of the construction standards adopted by the Commissioner.

(B) The Department, at its discretion, may require random submissions of sealed plans and calculations for buildings and structures which have been documented by the engineer as being in compliance with the wind loads of the construction standards adopted by the Commissioner.

(2) If the Department finds a building or structure that does not meet the required wind loads of the construction requirements adopted by the Commissioner or does not meet the prescriptive building code or construction guide, a certificate of compliance will not be issued by the Department; or if a certificate of compliance has been issued on a building or structure found not to be in compliance with the wind loads of the construction standards adopted by the Commissioner, the certificate of compliance may be rescinded.

(3) If the Department finds a building or structure that does not meet the wind loads of the construction standards adopted by the Commissioner, and has been submitted to the Department for the issuance of a certificate of compliance, the appointed qualified inspector that conducted the inspection of the building or structure and submitted the notice of compliance to the Department may be subject to sanctions by the Department, pursuant to Insurance Code Articles 21.49 §6A, 1.10 and 1.10E.

(4) If the Department finds a building or structure may not meet the wind loads of the construction standards adopted by the Commissioner, the engineer must provide:

(A) all substantiating information such as plans and calculations bearing the engineer's seal;

(B) inspection forms and field notes; and,

(C) dates of the inspections conducted by the engineer for assurance of compliance with design and construction of the building or structure.

(5) Failure to provide the information requested by the Department in paragraph (4) of this subsection will result in a certification of compliance not being issued by the Department for the building or structure in question and the engineer may be subject to sanctions by the Department.

(i) The application form required in subsection (e) of this section, Application for Appointment as a Qualified Inspector, Form ENG-1, is adopted by reference, effective for inspections conducted on or after February 1, 1999.

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, 1998.

TRD-9817459
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 30, 1998
Proposal publication date: June 26, 1998
For further information, please call: (512) 463–6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 433. Forms

37 TAC §§433.1, 433.3, 433.5, 433.7

The Texas Commission on Fire Protection adopts the repeal of §§433.1, 433.3, 433.5, and 433.7, concerning forms, without changes to the text published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8658).

The justification for this repeal is the elimination of obsolete and unnecessary text.

The repeal of this chapter removes obsolete language.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and 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 12, 1998.

TRD-9817489
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Effective date: December 2, 1998
Proposal publication date: August 21, 1998
For further information, please call: (512) 918–7189

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Chapter 491. Voluntary Regulation of State Agencies and State Agency Employees

37 TAC §491.1

The Texas Commission on Fire Protection adopts an amendment to §491.1, concerning election of components for voluntary regulation of state agencies and state agency employees, without changes to the text published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8659).

The justification for this section is the elimination of obsolete language and substitution of language consistent with rule changes to other chapters.

The amendment clarifies the provisions for election of components and promotes consistency with terminology used in other chapters pertaining to fire protection personnel.

There were no comments received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.083, which provides for voluntary regulation of certain state agencies and state agency employees.

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 12, 1998.

TRD-9817490
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Effective date: January 1, 1999
Proposal publication date: August 21, 1998
For further information, please call: (512) 918–7189

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Chapter 493. Voluntary Regulation of Federal Agencies and Federal Agency Employees

37 TAC §493.1

The Texas Commission on Fire Protection adopts an amendment to §493.1, concerning election of components for voluntary regulation of federal agencies and federal agency employees, without changes to the text published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8659).

The justification for this section is to eliminate obsolete language and substitute language consistent with rule changes to other chapters.

The amendment clarifies the provisions for election of components and promotes consistency with terminology used in other chapters pertaining to fire protection personnel.

There were no comments received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.084, which provides for voluntary regulation of certain federal agencies and federal agency employees.

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 12, 1998.

TRD-9817491
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Effective date: January 1, 1999
Proposal publication date: August 21, 1998
For further information, please call: (512) 918–7189

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 92. Personal Care Facilities

The Texas Department of Human Services (DHS) adopts amendments to §92.10, §92.12, §92.18, §92.41, and §92.127; adopts the repeal of §92.125; and adopts new §92.125. The amendment to §92.18 and new §92.125 are adopted with changes to the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9710). The amendments to §92.10, §92.12, §92.41, and §92.127; and the repeal of §92.125 are adopted without changes and will not be republished.

Justification for the amendments, repeal, and new section is to protect the public by better informing consumers about the staffing patterns in personal care facilities, and through the Disclosure Statement, about all aspects of a facility's operations; increasing the staff training requirements; requiring facilities to prepare for Year 2000 eventualities; and ensuring that facilities grant residents all rights required by law.

The amendments (except §92.18), repeal, and new section will function by deleting the current staffing ratios and requiring that facilities develop and post their own staffing policies, based upon the needs of the residents; requiring facilities to complete a Personal Care Disclosure Statement, which delineates policies, procedures, and services provided by their specific personal care facility and fully explain and give it to potential residents and their families; increasing staff training requirements; requiring facilities to make reasonable efforts to ensure against any problems that may result from Year 2000 computer problems; and revising the Resident's Bill of Rights to include changes resulting from House Bill 3100, 75th Legislature (1997), which amended the Rights of the Elderly, Human Resources Code, Chapter 102. The amendment to §92.18 will function by establishing a fee for the Alzheimer's certification.

The department received a comment from the Texas Association of Residential Care Communities. A summary of the comment and the department's response follows.

Comment: Language in §92.125, Resident's Bill of Rights, which appeared in the old standards and was still present in the version approved by the Aged and Disabled Advisory Committee and the TDHS Board of Directors, was removed in the version that was printed in the *Texas Register*. Restore the following language and designate it as (vi): "the resident repeatedly abuses alcohol, drugs, facility smoking regulations, or manifests severe and intentional anti-social behavior."

Response: The department does not concur. The language was removed because §92.125 is based solely on §247.065 of the Texas Health and Safety Code and §102.003 of the Human Resources Code, and that particular language does not appear in statute. A personal care facility could still discharge a resident exhibiting such behavior under §92.125(X)(iii), which states: "the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made."

The department corrected the subchapter reference and added a reference to Health and Safety Code, Chapter 252, in §92.18(b), and deleted the word "situation" from §90.125(a)(3)(Y).

Subchapter B. Application Procedures

40 TAC §§92.10, 92.12, 92.18

The amendments are adopted under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities.

The amendments implement the Health and Safety Code, §§247.001- 247.066.

§92.18. License Fees.

(a) (No change.)

(b) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter C of this chapter (relating to Standards for Licensure) must pay an annual fee of $100.

(c) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Texas Department of Human Services (DHS) has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D, Chapter 252, and Chapter 247, §247.003(b).

(2) DHS charges and collects an annual fee from each institution licensed under Health and Safety Code, Chapters 242, 247, and 252 each calendar year if the amount of the nursing and convalescent trust fund is less than $500,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide $500,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(d) Payment of fees. Payment of fees must be by check, cashier's check, or money order made payable to the Texas Department of Human Services. All fees are nonrefundable, except as provided by the Texas Government Code, Chapter 2005.

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 16, 1998.

TRD-9817596
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: January 1, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 438–3765

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Subchapter C. Standards for Licensure

40 TAC §92.41

The amendment is adopted under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities.

The amendment implements the Health and Safety Code, §§247.001- 247.066.

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 16, 1998.

TRD-9817595
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: January 1, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 438–3765

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Subchapter G. Miscellaneous Provisions

40 TAC §92.125

The repeal is adopted under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Chapter 102, which establishes the rights of the elderly.

The repeal implements the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §102.002.

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 16, 1998.

TRD-9817594
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: January 1, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 438–3765

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40 TAC §92.125, §92.127

The new section and amendment are adopted under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and under the Human Resources Code, Chapter 102, which establishes the rights of the elderly.

The new section and amendment implement the Health and Safety Code, §§247.001-247.066, and the Human Resources Code, §102.002.

§92.125. Resident's Bill of Rights and Provider Bill of Rights.

(a) Resident's bill of rights.

(1) Each personal care facility must post the resident's bill of rights, as provided by the department, in a prominent place in the facility and written in the primary language of each resident. A copy of the Resident's Bill of Rights must be given to each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the personal care facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician and the use is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel;

(B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;

(C) practice the religion of the resident's choice;

(D) if mentally retarded, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian;

(E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:

(i) has the right to make his/her own choices regarding personal affairs, care, benefits, and services;

(ii) has the right to be free from abuse, neglect, and exploitation; and

(iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his/her affairs;

(F) a safe and decent living environment;

(G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services;

(H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint;

(I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly;

(J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;

(K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(L) manage his or her financial affairs. The resident may authorize in writing another person to manage his/her money. The resident may choose the manner in which his/her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods. The resident must be given, upon request of the resident or the resident's representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law;

(M) access the resident's records, which are confidential and may not be released without the resident's consent, except:

(i) to another provider, if the resident transfers residence; or

(ii) if the release is required by another law;

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being;

(O) participate in developing his/her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met;

(P) be given the opportunity to refuse medical treatment or services after the resident:

(i) is advised by the person providing services of the possible consequences of refusing treatment or services; and

(ii) acknowledges that he/she understands the consequences of refusing treatment or services;

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. If a resident is married and the spouse is receiving similar services, the couple may share a room;

(S) retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other residents;

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) refuse to perform services for the facility, except as contracted for by the resident and operator;

(W) be informed by the provider no later than the 30th day after admission:

(i) whether the resident is entitled to benefits under Medicare or Medicaid; and

(ii) which items and services are covered by these benefits, including items or services for which the resident may not be charged;

(X) not be transferred or discharged unless:

(i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;

(ii) the resident's health is improved sufficiently so that services are no longer needed;

(iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or

(v) the resident fails, after reasonable and appropriate notice, to pay for services;

(Y) not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

(i) that the facility intends to transfer or discharge the resident;

(ii) the reason for the transfer or discharge;

(iii) the effective date of the transfer or discharge;

(iv) if the resident is to be transferred, the location to which the resident will transferred; and

(v) any appeal rights available to the resident;

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations;

(AA) have access to the service of a representative of the State Long Term Care Ombudsman Program, Texas Department on Aging; and

(BB) execute an advance directive, under the Natural Death Act (Chapter 672, Health and Safety Code) or Chapter 135, Civil Practice and Remedies Code, or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider's bill of rights.

(1) Each personal care facility must post a providers' bill of rights in a prominent place in the facility.

(2) The providers' bill of rights must provide that a provider of personal care services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and personal care facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the personal care facility. During evening hours and on weekends or holidays, notice to DHS must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

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 16, 1998.

TRD-9817593

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: January 1, 1999

Proposal publication date: September 25, 1998

For further information, please call: (512) 438–3765

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Part II. Texas Rehabilitation Commission

Chapter 109. Development Disabilities Program

40 TAC §109.7

The Texas Rehabilitation Commission adopts an amendment to §109.7, concerning the Traumatic Brain Injury Advisory Board without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* and will not be republished (23 TexReg 10631).

The amendment is necessary to correct an erroneous citation in subsection (a).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

Filed with the Office of the Secretary of State on November 16, 1998.

TRD-9817541

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Effective date: December 6, 1998

Proposal publication date: October 16, 1998

For further information, please call: (512) 424–4050

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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

State Council on Competitive Government

Title 1, Part XVI

The State Council on Competitive Government (the "Council") proposes to review Title 1, Texas Administrative Code, Part XVI, Chapter 401, Subchapters A through F, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of the review process, the State Council on Competitive Government is proposing to amend and continue to adopt the following rule sections located under Title 1, Texas Administrative Code, Part XVI: §§401.1, 401.2, 401.3, 401.4, 401.21, 401.22, 401.23, 401.24, 401.25, 401.26, 401.27, 401.28, 401.42, 401.43, 401.44, 401.45, 401.46, 401.47, 401.48, 401.49, 401.61, 401.62, 401.81, 401.82, 401.102, 401.103, and 401.104. The proposed amendments will be published in a future issue of the *Texas Register* for public comment. The Council is not proposing any changes to §401.41 and §401.101.

The Council's reason for adopting or readopting these rules continues to exist.

Comments on the proposed rules may be submitted to Michelle Gee, Director, State Council on Competitive Government, 1711 San Jacinto Blvd., Room 201-E, Austin, Texas, 78701, within 30 days of the publication of the proposed adoption. Comments may be faxed to Ms. Gee at (512) 463-3310. Comments received after the 30 day period will not be considered.

TRD-9817531
Chester Beattie
General Counsel
State Council on Competitive Government
Filed: November 13, 1998

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Interagency Council on Early Childhood Intervention

Title 25, Part VIII

The Interagency Council on Early Childhood Intervention (ECI) proposes to review the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter B. Early Childhood Intervention Service Delivery.

§621.21

§621.22

§621.23

§621.24

§621.25

§621.26

§621.27

§621.28

§621.29

§621.30

§621.31

§621.32

§621.33

The ECI is contemporaneously proposing amendments to §§621.22-621.24, 621.33 and the repeal of §621.32 elsewhere in this issue of the *Texas Register*.

Comments on the review of these proposed rules may be submitted to Alex Porter, General Counsel, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-9817591
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: November 16, 1998

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Texas Education Agency

Title 19, Part II

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal,

Subchapter AA, Teacher Appraisal, pursuant to the 1998-99 General Appropriations Act, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 150, Subchapter AA, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9817545
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter BB, Administrator Appraisal, pursuant to the 1998-99 General Appropriations Act, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 150, Subchapter BB, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9817546
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits, pursuant to the 1998-99 General Appropriations Act, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 153, Subchapter AA, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9817547
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, Subchapter BB, Commissioner's Rules Concerning School District Staff Development, pursuant to the 1998-99 General Appropriations Act, Section 167.

As required by Section 167, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 153, Subchapter BB, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9817548
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

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State Finance Commission

Title 7, Part I

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 12, Subchapters B-D, comprised of §12.31 and §12.32, regarding loans, §12.61, regarding investment limits, and §12.91, regarding other real estate owned. This review is undertaken pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review is scheduled for the commission's meeting on February 19, 1999.

Any questions or written comments pertaining to this notice of intention to review should be directed to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas, 78705, or by e-mail to everette.jobe@banking.state.tx.us. Any proposed changes to rules 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 period prior to final adoption or repeal by the commission.

TRD-9817528
Everette D. Jobe
Certifying Official
State Finance Commission
Filed: November 13, 1998

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General Land Office

Title 31, Part I

In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter and sections referenced:

Chapter 1 Executive Administration

Subchapter B. Purchase of Excess Acreage: §§1.11-1.14

§1.51 Vacancy Listing

Subchapter F. Procedures for Hearings: §§1.61-1.78

The resulting re-adoption, amendment, and/or repeal of these rules are expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495.

TRD-9817555
Garry Mauro
Commissioner
General Land Office
Filed: November 16, 1998

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In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter referenced:

Chapter 5. Records

The resulting re-adoption, amendment, and/or repeal of these rules is expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495.

TRD-9817519
Garry Mauro
Commissioner
General Land Office
Filed: November 13, 1998

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In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter and sections referenced.

Chapter 13. Land Resources

Subchapter A. Rules, Practice, and Procedure for Land Leases and Trades: §§13.1-13.3

Subchapter B. Rights-of-Way Over Public Lands: §§13.11-13.20

Subchapter C. Special Board of Review Hearings: §§13.30-13.40

Subchapter D. Administration and Management of Public Free School Lands and Coastal Public Lands: §§13.51-13.54

The resulting re-adoption, amendment, and/or repeal of these rules are expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495.

TRD-9817556
Garry Mauro
Commissioner
General Land Office
Filed: November 16, 1998

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In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter referenced:

Chapter 14. Relationship Between Agency and Private Organizations

The resulting re-adoption, amendment, and/or repeal of these rules is expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495.

TRD-9817520
Garry Mauro
Commissioner
General Land Office
Filed: November 13, 1998

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In accordance with the Appropriations Act, §167, the General Land Office submits this Notice of Intent to Review the rules found in the chapter referenced:

Chapter 17. Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures

The resulting re-adoption, amendment, and/or repeal of these rules is expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495.

TRD-9817557
Garry Mauro
Commissioner
General Land Office
Filed: November 16, 1998

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Texas Department of Human Services

Title 40, Part I

The Texas Department of Human Services files this notice of intention to review Title 40 Texas Administrative Code (TAC), Chapter 15 (relating to Medicaid Eligibility) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As required by §167, the Department will accept comments regarding whether the reason for adopting each of the rules in 40 TAC, Chapter 15 continues to exist. The deadline for the comments is 30 days after this publication in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review Chapter 15 should be directed to Judy Coker, Long Term Care Section, Texas Department of Human Services W-513, P.O. Box 149030, Austin, Texas, 78714-9030, or at (512) 438-3227.

TRD-9817655
Glenn Scott
General Counsel
Texas Department of Human Services
Filed: November 17, 1998

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Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) proposes the review of the following sections of 30 Texas Administrative Code (TAC) Chapter 288, 294, 295, and 297.

Chapter 288 relates to Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, Chapter 294 relates to

Groundwater Management Areas and Groundwater Priority Management Areas, Chapter 295 relates to procedural rules for water rights authorizations, and Chapter 297 relates to substantive rules of water rights authorizations.

The commission proposes to review these rules as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 288, 294, 295, and 297 and determined that the reasons for adopting those rules continue to exist. The rules are necessary for the regulation of state water in the state by the commission, and the protection of groundwater.

Chapter 288, concerning Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, adopted pursuant to Texas Water Code, §§11.134(b), 11.1271 and 11.1272, these rules are necessary to protect the public health, safety, and welfare, by establishing reasonable minimum standards for water conservation plans and drought contingency plans in order to assure that the state's water resources are beneficially used, efficiently managed, not wasted, and reasonably managed during water shortages.

Chapter 294 concerning groundwater management areas, which are covered by the Texas Water Code Chapter, provide that the commission can designate management areas and priority groundwater management areas, and recommend that those areas be included in groundwater conservation districts.

Chapters 295 and 297 are the procedural and substantive rules for the regulation of state water, and include requirements for application for authorizations, and requirements for the different types of authorizations which may be obtained to appropriate state water under Texas Water Code, Chapter 11. Chapters 295 and 297 also implement Texas Water Code, Chapter 11. Specific rules to implement Chapters 11 and Chapter 36 of the Texas Water Code are necessary in order for the commission to exercise its statutory regulatory authority.

Comments on the commission's review of the rules contained in Chapters 288, 294, 295, and 297 may be mailed to Lutrecia Oshoko, TNRCC Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97146-297-WT. Comments must be received by December 28, 1998. For further information or questions concerning this proposal, please contact Todd Chenoweth, Water Policy Division, at (512) 239-4483.

TRD-9817682
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: November 18, 1998

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Texas Optometry Board

Title 22, Part XIV

The Texas Optometry Board proposes to review Title 22, Chapters 271, Examinations; 272, Administration; 273, General Rules; and 275, Continuing Education; pursuant to House Bill 1, Article IX, §167, 75th Legislation, R.S. (1997), and the review plan previously filed by the agency. The agency proposes to review for re-adoption the following rules:

§§271.1, 271.2, 271.3, 271.4, 271.6; 272.1, 273.1, 273.2, 273.3, 273.4, 273.5, 273.6, 273.7, 273.8, 273.9, 273.10, 273.11, 275.1, and 275.2

The agency's review will examine whether the reasons for adopting these rules continues to exist.

Comments on the proposed re-adoption may be submitted in writing to Ms. Lois Ewald, Texas Optometry Board, 333 Guadalupe, Suite 2-420, Austin, Texas, 78701-3942, phone: (512) 305-8502, e-mail: Lois.Ewald@mail.capnet.state.tx.us. Comments will be accepted for 30 days after publication of this notice in the *Texas Register*.

TRD-9817653
Lois Ewald
Executive Director
Texas Optometry Board
Filed: November 17, 1998

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Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review Procedural Rules, Subchapter J (relating to Summary Proceedings), §22.181 relating to Dismissal of a Proceeding; and §22.182 relating to Summary Decision pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). Project Number 17709 has been assigned to this proceeding.

As part of this review process, the commission is proposing an amendment to §22.181. The proposed amendment may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the §167 requirement as to whether the reason for adopting this section continues to exist in the comments filed on the proposed amendment.

The commission is not proposing any changes to §22.182. Comments regarding the §167 requirement as to whether the reason for adopting this section continues to exist may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 30 days after publication of this notice of intention to review. All comments should refer to Project Number 17709-Procedural Rules, Subchapter J.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §22.181. Dismissal of a Proceeding.

16 TAC §22.182. Summary Decision.

TRD-9817533
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 1998

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The Public Utility Commission of Texas files this notice of intention to review Procedural Rules, Subchapter N (relating to Decision and Orders), §§22.261 relating to Proposals for Decision; 22.262 relating to Commission Action After a Proposal for Decision; 22.263 relating to Final Orders; and 22.264 relating to Rehearing pursuant to the

Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 17709 has been assigned to this proceeding.

As part of this review process, the commission proposes amendments to §22.262 and §22.264. The proposed amendments may be found in the Proposed Rules section of the Texas Register. The commission will accept comments on the Section 167 requirement as to whether the reason for adopting these sections continues to exist in the comments filed on the proposed amendments.

The commission is not proposing any changes to §22.261 and §22.263. Comments regarding the Section 167 requirement as to whether the reason for adopting these sections continues to exist may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 within 30 days after publication of this notice of intention to review. All comments should refer to Project Number 17709 - Review of Subchapter N relating to Decision and Orders.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

TRD-9817570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 1998

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The Public Utility Commission of Texas files this notice of intention to review §23.98 relating to Abbreviated Dialing Codes pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). Project Number 17709 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.98 and is proposing new §26.127 of this title (relating to Abbreviated Dialing Codes) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers to replace this section. The proposed new section and the proposed repeal may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the §167 requirement in the comments filed on proposed new §26.127.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §23.98. Abbreviated Dialing Codes.

TRD-9817526
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 1998

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School Land Board

Title 31, Part IV

In accordance with the Appropriations Act, §167, the School Land Board submits the following Notice of Intent to Review the rules found in the chapter referenced:

Chapter 155. Land Resources

The resulting re-adoption, amendment, and/or repeal of these rules are expected to be completed by August 31, 1999.

All comments regarding this notice to review should be directed to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress, Room 626, Austin, Texas 78701-1495.

TRD-9817558
Garry Mauro
Chairman
School Land Board
Filed: November 16, 1998

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Adopted Rule Reviews

Interagency Council on Early Childhood Intervention

Title 25, Part VIII

The Interagency Council on Early Childhood Intervention (ECI) adopts the review of the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter A. Conduct of Council Meetings.

§621.1

§621.2

§621.3

§621.5

Subchapter D. Early Childhood Intervention Advisory Committee.

§621.61

§621.62

§621.63

§621.64

The proposed review was published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9440)

The ECI is contemporaneously adopting amendments to §§621.1-621.3, 621.5, 621.61 and 621.63 elsewhere in this issue of the *Texas Register*. Section 621.3 is adopted with a non-substantive change in subsection (c)(1). There is a reference to Article V, when in fact the proper reference is Article IX. The ECI is contemporaneously proposing an amendment to §621.64, elsewhere in this issue of the Texas Register. The amendment is necessary in subsection (e). There is a reference to Article V, when in fact the proper reference is Article IX.

No comments were received regarding adoption of the review.

The ECI concludes the review of Subchapter A, Conduct of Council Meetings and Subchapter D, Early Childhood Intervention Advisory Committee.

TRD-9817590
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: November 16, 1998

♦ ♦ ♦

Texas Education Agency

Title 19, Part II

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 61, Subchapter AA, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9799).

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. No changes are being proposed to the rules as a result of the review.

TRD-9817564
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter BB, Commissioner's Rules on Reporting Requirements, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 61, Subchapter BB, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9799).

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. No changes are being proposed to the rules as a result of the review.

TRD-9817565
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter DD, Commissioner's Rules Concerning Missing Child Prevention and Identification Programs, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 61, Subchapter DD, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9800).

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. No changes are being proposed to the rules as a result of the review.

TRD-9817566
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter B, Adult Basic and Secondary Education, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 89, Subchapter B, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9800).

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. As part of the review, the TEA is proposing amendments to 19 TAC §89.21 and 19 TAC §89.24, which may be found in the Proposed Rules section of this issue.

TRD-9817567
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter C, General Educational Development, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 89, Subchapter C, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9800).

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. As part of the review, the TEA is proposing amendments to 19 TAC §89.43 and 19 TAC §89.47, which may be found in the Proposed Rules section of this issue.

TRD-9817568
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 16, 1998

♦ ♦ ♦

Texas Commission on Fire Protection

Title 37, Part XIII

The Texas Commission on Fire Protection adopts the review of 37 TAC Chapter 491, concerning voluntary regulation of state agencies and state agency employees. This review was conducted in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed review was published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8696).

The Commission concurrently adopts an amendment to §491.1 in the Adopted Rules section of this issue of the *Texas Register*. This change was proposed as a result of the Commission's review of the rules. The amendment promotes consistency with terminology used in other chapters pertaining to fire protection personnel. Sections 491.3, 491.5, and 491.7 are adopted without change. No comments were received regarding the readoption of this chapter.

TRD-9817487
Thomas R. Thompson
General Counsel
Texas Commission on Fire Protection
Filed: November 12, 1998

♦ ♦ ♦

The Texas Commission on Fire Protection adopts the review of 37 TAC Chapter 493, concerning voluntary regulation of federal

agencies and federal agency employees. This review was conducted in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed review was published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8697).

The Commission concurrently adopts an amendment to §493.1 in the Adopted Rules section of this issue of the *Texas Register*. This change was proposed as a result of the Commission's review of the rules. The amendment promotes consistency with terminology used in other chapters pertaining to fire protection personnel. Sections 493.3, 493.5, and 493.7 are adopted without change. No comments were received regarding the readoption of this chapter.

TRD-9817488
Thomas R. Thompson
General Counsel
Texas Commission on Fire Protection
Filed: November 12, 1998

♦ ♦ ♦

Texas Department of Human Services

Title 40, Part I

The Texas Department of Human Services adopts without changes Title 40 Texas Administrative Code (TAC), Chapters 4, 5, 6, 7, 9, 11, 12, and 13 in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The proposed review was published in the October 2, 1998, issue of the *Texas Register*(23 TexReg 10051). No comments were received regarding the review.

TRD-9817656
Glenn Scott
General Counsel
Texas Department of Human Services
Filed: November 17, 1998

♦ ♦ ♦

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. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Texas Natural Resource Conservation Commission
Chapter 335 - Industrial Solid Waste and Municipal Hazardous Waste
Rule Log No. 98041-335-WS

Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", "scrap metal" and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1]These materials are governed by the provisions of §335.24(h) only.

[2]Except as provided in 40 CFR §261.4(a)(16) for mineral processing secondary materials

Figure 1: 30 TAC §335.1(D)(iv)

TABLE 1

	Use Constituting Disposal	Energy Recovery/Fuel	Reclamation	Speculative Accumulation[2]
	S.W. Def. (D)(i)	S.W. Def. (D)(ii)	S.W. Def. (D)(iii)	S.W. Def. (D)(iv)
	(1)	(2)	(3)	(4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		

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 Aerospace Commission

Notice of Request for Qualifications

Request for Qualification for Professional Accounting and Business Planning Services for the Texas Aerospace Commission. Number 354111998 Austin

General: The Texas Aerospace Commission (TAC) is seeking Statements for Qualification for accounting and business planning services for the project described below.

Project Description: The State of Texas is pursuing the development of a commercial spaceport from which to provide services for the final assembly, launch, space operations, landing, and payload integration of future space launch vehicles.

Work to be Performed: Analyze the business operations of existing and planned spaceports which accommodate commercial space launch vehicles. This should include:

* Methods of operation

* Responsibilities of owner/operator and user

* Tax and investment incentives

* Pricing policies

* Methods of financing capital investments

* Success of operations

* Liability of all parties

Develop options for owning and operating a commercial spaceport. Delineate the strengths and weaknesses of each option when considering:

* Combinations of public and private partnerships

* Competition

* Cost to the user

* Cost of operations

* Operational efficiencies

Develop options and the optimum partnerships between the state, local governments, and the private sector for a commercial spaceport.

Qualifications: As a part of this Request, perspective companies must submit Statements of Qualifications demonstrating corporate experience in:

* Developing commercial space business practices (domestic and foreign)

* Analyzing business and technical operations of U.S. commercial and government space launch facilities

* Analyzing business plans and operations of existing of planned commercial space launch vehicles

* Performing research of and analyzing commercial and government space markets

* Preparing business plans for public - private partnerships for space operations

* Working with federal and state regulatory agencies with responsibilities for space operations and environment protection

* Supporting the commercialization of advanced and emerging space technologies and services

Submissions Required: As part of this Request, Firms must submit Statements of Qualifications demonstrating expertise in providing the types of services described above. Those Statements which meet the pass/fail requirements will be scored by an RFQ Committee.

Selection Process: Pursuant to Texas Government Code, (2254.003, a firm shall be selected on the basis of demonstrated process competence and qualifications to perform the services for a fair and reasonable price.

Deadline: Qualifications will be received until 3:00 p.m. central standard time on (15 days after posting) by Ester Arispe, Texas Aerospace Commission, 1700 North Congress, Suite B-60, Austin, Texas 78711.

TRD-9817795
Ester Arispe
Agency Liaison
Texas Aerospace Commission
Filed: November 20, 1998

Texas Department of Agriculture

Notices of Public Hearing

The Texas Department of Agriculture (the department) will hold a public hearing to take public comment on a proposed amendment to §7.53 of the department's pesticide regulations, concerning the use of regulated herbicides in Brazoria County. The proposal will be published in the November 27, 1998, issue of the *Texas Register*. The hearing will be held on Tuesday, December 1, 1998, beginning at 1:30 p.m., at the Old Armery Building, 1800 County Road 171, Angleton, Texas 77515.

For more information, please contact Phil Tham, Deputy Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 475-1626.

TRD-9817647
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 17, 1998

♦ ♦ ♦

In accordance with the Texas Agriculture Code, §74.1042, the Texas Department of Agriculture (the department) will hold a public hearing to take public comment on proposed new §3.116, concerning the designation of the Northern Blacklands Boll Weevil Eradication Zone, as published in the November 13, 1998 issue of the *Texas Register* (23 TexReg 11513). The hearing will be held on Wednesday, December 2, 1998, beginning at 1:30 p.m., at the KJT Auditorium, 1216 S. Paris, Ennis, Texas.

For more information, please contact Katie Dickie Stavinoha, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, 512/463-7593.

TRD-9817648
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 17, 1998

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of November 4, 1998, through November 10, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Lone Star Marine Services, Inc.; Location: The project is located at the applicant's marine terminal at 7200 State Highway 87, on the Sabine-Neches Canal, approximately 2.3 miles southwest of the Veteran's Memorial Bridge on State Highway 87; Project Number: 98-0512-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit 11970(03), to install a 250 foot-long by 100 foot-wide drydock structure at the existing marine maintenance facility. The purpose and need for the project is to conduct maintenance work on the applicant's vessels; Type of Application: U.S.A.C.E. permit application #11970(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Harris County Flood Control District; Location: The project is located on Senger Gully, a tributary of Cypress Creek, adjacent to Interstate 45 and Northhill Drive, Harris County, Texas; Project Number: 98-0513-F1; Description of Proposed Action: The applicant proposes to widen, straighten, and stabilize a 540 foot section of Senger Gully. The design for the project is a 13.5 foot deep, concrete lined, trapezoidal channel with a 10 foot bottom width excavated from within the existing Senger Gully channel. The applicant proposes a drop structure on the downstream side of the freeway bridge, a concrete apron, and a drainage pipe to accommodate offsite drainage. Existing meanders and gullies that extend beyond the proposed right-of-way will be filled to match the existing adjacent grade. Approximately 340 cubic yards of material will be disturbed during construction, but there will be no net fill at the conclusion of the project. The purpose and need for the project is to correct existing drainage problems in the 1,700-acre watershed, where water is backing up in Senger Gully as it passes under Interstate 45; Type of Application: U.S.A.C.E. permit application #21423 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A.§§125-1387).

Applicant: Kenneth L. Berry; Location: The project is located on Ingleside Point in Corpus Christi Bay and adjacent to Ingleside on the Bay, in San Patricio and Nueces Counties, Texas. The USGS Quad reference map is Port Ingleside, Texas; Project Number: 98-0514-F1; Description of Proposed Action: The applicant is requesting authorization to construct 9000 feet of bulkhead for the purpose of erosion control. Approximately 43,000 cubic yards of material would be used as backfill behind the bulkhead. The applicant also requests authorization to construct a 300 by 12-foot boat basin for recreational use located adjacent to the La Quinta Channel. The basin would be bounded by 875 feet of bulkhead. The area inside the proposed basin would be dredged by mechanical or hydraulic means to a depth of -20 feet mean low tide. All dredged material would be placed on the island behind the existing levee; Type of Application: U.S.A.C.E. permit application #21500 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A.§§125-1387).

Applicant: City of Galveston, Parks and Beach Board; Location: This project is located on East Lagoon, immediately south of Boddeker Drive, Galveston, Galveston County, Texas; Project Number: 98-0515-F1; Description of Proposed Action: The applicant proposes to construct a raised hiking trail, a footbridge, and a pier to provide a raised, dry walking trail and a bird observation/fishing platform. The hiking trail will be 5 feet wide, 1,560 feet long, 5 inches high, and will impact 0.18 acre of jurisdictional wetlands. Approximately 144 cubic yards of crushed cinder or asphaltic-type semipermeable material will be used as fill. The trail will be culverted at drainage paths or at 100 foot intervals using 4-inch PVC pipe. Four 14-inch-long by 18-inch-wide by 3.5 foot-high interpretive signs will be placed along the trail. The footbridge will be 4 feet wide by 20 feet long and will cross a small tidal creek emptying into East Lagoon. The pier will be located on East Lagoon at the end of the hiking trail. The pier will be 4 feet wide by 70 feet long with a 10 by 20 foot terminal T-head; Type of Application: U.S.A.C.E. permit application #21490 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. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9817440
Garry Mauro
Chairman
Coastal Coordination Council
Filed: November 10, 1998

♦ ♦ ♦

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of November 11, 1998, through November 18, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: The HouReal Corporation; Location: The project is located on Clear Creek, on a 104-acre tract of land on the north side of FM 518, approximately 1-mile west of IH 45, in League City, Galveston County, Texas; Project Number 98-0522-F1; Description of Proposed Action: The applicant proposes to place fill material into 8.51 acres of wetlands. Of this acreage 4.26 acres are composed of isolated micro-depressions and 4.35 acres consist of shallow, intermittently inundated tributaries of Clear Creek. A boat launching ramp, boardwalk and concrete pathway will impact an additional 0.27 acres of adjacent wetlands along the edge of the creek. The boat ramp area will also contain a turning area for vehicles. Purpose of the work is to support development of a residential subdivision. The applicant has designed the project to avoid lot development in all wetland areas below the mean high water mark along the edge of Clear Creek. This area will be flagged during construction to minimize impacts from construction equipment. To compensate for wetland impacts the applicant will create 15.1 acres of wetland onsite. The mitigation will consist of 5 acres of wet prairie, 9-acres of wetland forest and 1.1 acre of tidal wetlands. The mitigation area as well as the wetland areas along Clear Creek will be protected in perpetuity by deed restriction and by limitation in homeowner's association documentation; Type of Application: U.S.A.C.E. permit application number 21367 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Lance Stevens; Location: The project is located on the northern shoreline of Clear Lake, at 2613 East NASA Road 1, in Seabrook, Harris County, Texas; Project Number 98-0523-F1; Description of Proposed Action: The applicant proposes to retain pilings and a 6-by 58.5-foot deck, a 6-by 8-foot deck, stairs and to add to the structure a 6-by 53.5-foot deck. The structures are attached to an existing apartment building, which extends over the water. Water depths at the deck are -5.5 feet mean high water. Purpose of the work is to support the building which has tilted from subsidence, protect it from collisions with boaters and provide access by pedestrians to all sides of the apartment building; Type of Application: U.S.A.C.E. permit application number 21443 under §10 of the Rivers.

Applicant: Friendswood Development Company; Location: The project is located on the northern side of Hughes Ranch Road, approximately 0.25 miles east of SH 288, Brazoria County, Texas; Project Number 98-0524-F1; Description of Proposed Action: The applicant proposes to place fill material into 8.97 acres of isolated wetlands. The project site is a 34.89-acre, vacant tract of land surrounded by residential development. Wetland areas on the site are dominated by club-head cutgrass, swamp smartweed and Chinese tallow. Bermuda grass and catclaw briar are the dominant vegetative species in upland areas. Purpose of the work is to provide for the development of a residential subdivision. To compensate for wetland impacts the applicant proposed to create approximately 9-acres of wetland prairie swales on an 18-acre tract of land. The mitigation acreage is part of a 47-acre tract dedicated for mitigation projects. Existing wetlands on the site, 0.42 acres, will be preserved; Type of Application: U.S.A.C.E. permit application number 21509 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Bo-Mac Contractors, Inc.; Location: The project is located in wetlands adjacent to Bairds Bayou and the Neches River, approximately 3,000 feet east of the IH-10 crossing of the Neches River on the north side of IH-10, near Rose City, in Orange County, Texas; Project Number 98-0525-F1; Description of Proposed Action: The applicant proposes to fill 2.56 acres of adjacent wetlands to expand the material handling and storage capacity of an existing asphalt plant. Approximately 14,450 cubic yards of fill material will be used to raise the elevation of the 2.83-acre expansion site to an approximate height of three to four feet above existing grade. The fill material consist of clean subgrade highway material, limestone rock, and select construction soils. Runoff of fill material into Bairds Bayou will be prevented by retaining levees that will be constructed on the west of the north sides of the expansion site. Silt screens will be placed between the levee and Baird Bayou (north side) and the remaining forested wetlands (west side) to minimize the introduction of suspended solids into these areas. Furthermore, the applicant proposes to provide off-site compensatory mitigation at Tony Houseman State Park and Wildlife Management Area located at Blue Elbow Swamp. Mitigation will include the excavation of portions of three logging canal spoil banks to enhance and restore up to 150 acres of bald cypress/water tupelo forested wetlands.; Type of Application: U.S.A.C.E. permit application number 21497 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).

FEDERAL AGENCY ACTIVITIES:

Applicant: Gulf of Mexico Fishery Management Council; Project Number 98-0521-F2; Description of Proposed Activity: Pursuant to the Magnuson Stevens Fishery Conservation and Management Act, the applicant proposes Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources (Mackerels) in the Gulf of Mexico and South Atlantic Including Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Amendment 9 includes 11 proposed management alternatives for the purpose of addressing problems with equitable allocation of the available king and Spanish mackerel resource among the various commercial user groups, as well as the recreational and for-hire sectors of the fishery. These alternatives also attempt to address problems with quota overruns, derby fishing, short seasons, and data collection. Finally, measures to expedite the recovery of Gulf group king mackerel are considered.

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. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9817683
Garry Mauro
Chairman
Coastal Coordination Council
Filed: November 18, 1998

♦ ♦ ♦

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed amendments to §§7.42, 7.43, 7.51, and 7.84. The rules appeared in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11092).

On page 11093, §7.42(c), due to *Texas Register* error, subsection (c) is new, but is not underlined to indicate new text.

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Notice of Request for Proposals

Notice of Issuance of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a management and performance review of the Killeen Independent School District (Killeen ISD). From this review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer or proposers will be expected to begin performance of the contract on or about January 20, 1999.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th St., Room G-24, Austin, Texas, 78744, (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on, Monday, November 30, 1998, between Noon (12 p.m.) and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Friday, December 11, 1998.

Closing Date: Proposals must be received in Legal Counsel's Office no later than 4 p.m. (CZT), on Wednesday, December 30, 1998. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - November 30, 1998, Noon (12 p.m.) CZT; Mandatory Letter of Intent and Questions Due - December 11, 1998, 4 p.m. CZT; Proposals Due - December 30, 1998, 4 p.m. CZT; Contract Execution - January 12, 1999, or as soon thereafter as practical; Commencement of Project Activities - January 20, 1999.

TRD-9817678
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: November 18, 1998

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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 Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/23/98 - 11/29/98 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 11/23/98 - 11/29/98 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 12/01/98 - 12/31/98 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by Art. 1E.003 for the period of 12/01/98 - 12/31/98 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9817684
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 18, 1998

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Texas Credit Union Department

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Denton Area Teachers Credit Union, Denton, Texas to expand its field of membership. The proposal would permit individuals who live or work within the boundaries of the Northwest Independent School District (NISD), excluding persons eligible for primary membership in any other credit union with a full service office in the specific geographic area on December 31, 1998, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would permit the tenants of the Collins Crossing Office Development, Richardson, Texas and their employees to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would permit the staff and members of the North Texas PC Users Group, Inc., its successors, and their family members to be eligible for membership in the credit union.

An application was received from First Educators Credit Union, Houston, Texas to expand its field of membership. The proposal would permit the employees of all offices of Goodwill Industries of Houston located in Montgomery County 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-9817670
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: November 18, 1998

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership Approved:

Capitol Credit Union, Austin, Texas - See *Texas Register* issue dated August 28, 1998.

Application(s) to Amend Articles of Incorporation Approved:

Doches District Telco Credit Union, Nacogdoches, Texas - See *Texas Register* issue dated September 25, 1998.

Montgomery Ward Texas Credit Union, Arlington, Texas - See *Texas Register* issue dated September 25, 1998.

Wichita Falls Postal Credit Union, Wichita Falls, Texas - See *Texas Register* issue dated September 25, 1998.

TRD-9817669
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: November 18, 1998

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Texas Department of Criminal Justice

Notice to Bidders - Coffield Unit

The Texas Department of Criminal Justice invites bids for Roof Replacement at the Coffield Unit at Tennessee Colony Texas. The scope of work consists of total roof replacement at multiple roof areas with a combined square footage of approximately 105,675 square feet. Total roof replacement includes removal of existing roof systems including insulation, base flashing, metal flashing and present roof membrane. The installation of new installation, Coal Tar Pitch roof system membrane with specified surfacing, base flashing, and counter flashing as specified. Contractor shall use a fume recovery system at all times while installing the new roofing materials. Contract Documents prepared by Amtech Roofing Consultants, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving "Notice of Proceed" from the Owner:

A. Contractor must have a minimum of three years documented experience, including:

1. Minimum of three projects of comparable size and specified systems.

2. Certified by the roofing materials manufacturer as an approved No Dollar Limit (NDL) applicator for a minimum of two years prior to Bid Date, and qualified to provide specified warranty on selected systems and flashings.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer: Amtech Roofing Consultants, 3300 South Gessner, Suite 245, Houston, Texas 77063; phone: (713) 266-4829.

A Pre-Bid conference will be held at 1:30 p.m., on December 1, 1998, at the Coffield Unit, Tennessee Colony, Texas followed by a site-visit. Attendance is mandatory. A second site-visit will be at 10:30 a.m., on December 8, 1998, for the contractors to take additional measurements of the roof areas. This second site-visit is not mandatory.

Bids will be publicly opened and read at 2 p.m., December 17, 1998, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (former Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9817521
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: November 13, 1998

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Notice to Bidders - Mark Michael Unit

The Texas Department of Criminal Justice invites bids for Roof Replacement at the Mark Michael Unit at Tennessee Colony Texas. The scope of work consists of total roof replacement at two areas with a combined square footage of approximately 95,144 square feet. Total roof replacement includes removal of existing roof systems including insulation, base flashing, metal flashing and present roof membrane. The installation of new installation, SBS modified roof system membrane with specified surfacing and counter flashing as specified. As further shown in the Contract Documents prepared by Amtech Roofing Consultants, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving "Notice of Proceed" from the Owner:

A. Contractor must have a minimum of three years documented experience, including:

1. Minimum of three projects of comparable size and specified systems.

2. Certified by the roofing materials manufacturer as an approved No Dollar Limit (NDL) applicator for a minimum of two years prior to Bid Date, and qualified to provide specified warranty on selected systems and flashings.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/ Engineer: Amtech Roofing Consultants, 3300 South Gessner, Suite 245, Houston, Texas 77063; phone: (713) 266-4829.

A Pre-Bid conference will be held at 10:30 a.m., on December 1, 1998, at the Mark Michael Unit, Tennessee Colony, Texas followed by a site-visit. Attendance is mandatory.

Bids will be publicly opened and read at 2 p.m., December 17, 1998, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (former Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9817522
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: November 13, 1998

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Notice to Bidders - Revision

The Texas Department of Criminal Justice published a Notice to Bidders for construction of the Sex Offenders Treatment Facility at the Lockhart V. Hightower Unit in Dayton, Texas in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11460).

Since publication of the notice, the following dates have changed:

The Pre-Bid conference will be held at 10 a.m. on December 3, 1998.

Bids will be publicly opened and read at 2 p.m. on December 15, 1998.

TRD-9817460
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: November 12, 1998

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Texas Education Agency

Grant Application Requests-Standard Application System Concerning Public Charter Schools, 1998–1999

Eligible Applicants. The Texas Education Agency (TEA) is requesting grant applications under the Standard Application System (SAS-408) from campus charters, campus program charters, and open-enrollment charter schools, as established by Texas Education Code, Chapter 12, to increase the understanding of the public charter schools model by providing financial assistance for the design and implementation of public charter schools. Campus charters and campus program charters must be submitted in the name of the district. In addition, charter schools that have been in operation for at least three consecutive years are also eligible if they have demonstrated overall success in the following: substantial progress in improving student achievement; high levels of parent satisfaction; and management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Description. In accordance with the purpose of the federal Public Charter Schools Grant Program and in support of the intent of current Texas statute, the objectives of the program funded by TEA are to: (1) provide incentives and support for the development of campus charters designed to serve populations of predominately educationally disadvantaged students and to enable the students to meet the state education standards of performance; (2) assist in the development and initial implementation of several different models of campus charters serving elementary, middle school, and high school students in urban, suburban, and rural areas; and (3) document, evaluate, and disseminate information identifying effective practices used in campus and open-enrollment charters that result in notable academic gains by educationally disadvantaged students and other students. The evaluation of the charters will be based in large part on the outcomes for students served by the charters on the statewide performance measures, the academic excellence indicators. Therefore, a related program objective will be for the grant recipients to demonstrate a significant increase in performance for educationally disadvantaged students by the charters over a three-year planning and implementation period.

Dates of Project. The Public Charter Schools Grant Program will be implemented during the 1998-1999 school year. Applicants should plan for a starting date of approximately February 1, 1999, and an ending date of no later than September 30, 1999.

Project Amount. Funding will be provided for approximately 145 projects. Each project will receive a maximum of $30,000 for the 1998-1999 school year. Project funding in any subsequent year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of

Education, the commissioner of education, and the state legislature. This project is funded 100% from Public Charter Schools federal funds.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted. The TEA is not committed to pay any costs before an application is approved. The TEA is not obligated to award a grant or pay any costs incurred in preparing an application.

Requesting the Application. A copy of the complete SAS-408 will be mailed to each eligible campus charter, campus program charter, and open-enrollment charter school. Other interested parties may obtain a complete copy of SAS-408 by writing to: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the SAS number in your request.

Further Information. For clarifying information about the SAS, contact Deborah Havens, Division of School and Community Support, Texas Education Agency, (512) 463-9575.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency no later than 5:00 p.m. (Central Time), Wednesday, January 6, 1999, and will be effective on the date received in the agency. However, the application is subject to negotiation and approval of TEA.

TRD-9817680
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 18, 1998

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Request for Proposals Concerning Services to Assist in the Design and Implementation of Educational Technology Pilot Programs

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) number 701-99-003 from nonprofit organizations, institutions of higher education, private companies, individuals, and regional education service centers to assist in designing and implementing pilot programs using innovative technologies to deliver curriculum and improve student learning. Historically underutilized businesses (HUBs) are encouraged to submit a proposal.

Description. The contractor selected will assist in the design and implementation of pilot programs using innovative technologies to deliver curriculum and improve student learning. The pilots would represent different types of technologies, one of which is the use of notebook computers, and utilize three to five different vendors. The technologies would be implemented in a representative cross section of 15-25 school districts. The selected contractor will assist TEA with the following tasks: (1) design the standards to be met by vendors selected to provide technology services; (2) assist TEA in developing cost guidelines for the pilots; (3) assist TEA in selecting the pilot sites; (4) incorporate the standards into a request for proposals; (5) evaluate proposals and provide a recommendation to TEA; (6) collaborate with vendors/publishers/developers interested in delivering content to pilot sites; (7) provide pilot oversight, including coordination of maintenance and repair; (8) provide evaluation services (formative, summative) related to the pilot programs to include monitoring and reporting student performance in all technology pilot sites; and (9) assist in writing year-end reports with recommendations for future action, including cost estimates.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than March 1, 1999, and an ending date of no later than May 31, 2001.

Project Amount. One contractor will be selected to receive a maximum of $500,000 during the contract period. Subsequent project funding will be based on satisfactory progress of first-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, and the state legislature.

Selection Criteria. Proposals will be based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP number 701-99-003 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Dr. Robert H. Leos, Division of Textbook Administration, Texas Education Agency, (512) 463-9601.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Friday, January 29, 1999, to be considered.

TRD-9817673
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: November 18, 1998

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Employees Retirement System

Correction of Error

The Employees Retirement System proposed amendments to §§67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.17, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.93, 67.75, 67.77, 67.81, 67.83, 67.87, 67.89, 67.91, 67.93, 67.97, 67.103, 67.105, 67.107, 67.109, and 67.111. The rules appeared in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11318 and 11320).

Due to *Texas Register* error, on page 11318, §67.23(c) was shown as deleted language instead of new language.

Due to Employees Retirement System error, on page 11320, §67.47(b), the new language "or" was omitted. The sentence should read, "...shall be filed with the executive director or examiner...".

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General Services Commission

Notice to Bidders for Project Number 98-010-405 - Houston Regional Headquarters

Sealed bids will be addressed to General Services Commission (GSC), Facilities Construction and Space Management Division (FCSM), on December 17, 1998, at 3:00pm for:

Project Number 98-010-405 Houston Regional Headquarters, Houston, Texas. The approximate cost range is under $10,000,000.00.

Bid Receipt Location: General Services Commission, Central Services Building, 1711 San Jacinto Blvd., Bid Room 180, Austin, Texas 78701.

Contractor Qualifications: Prime contractors are required to submit a contractor qualification form prior to submitting bids, to the FCSM, 1711 San Jacinto Blvd., Austin, Texas 78701, no later than 3:00pm, December 5, 1998 to document compliance with contractors qualifications requirements for this project. Telephone (512) 463-3417 to obtain form. Information is to be used in determining if a contractor is qualified to receive a contract award for the project.

Pre-Bid Conference: A pre-bid conference will be held on December 3, 1998, at 2:00 p.m. at the Department of Public Safety, 10110 Northwest Freeway, Houston, Texas 77092.

Bid Documents: Plans and specifications will be available November 24, 1998, for prime contractors at: Harry Golemon Architects, 601 Jefferson, Suite 3750, Houston, Texas 77002-7907. Contact: Robert Hansen, (713) 655-9988, Fax (713) 655-1233.

A refundable deposit of $300.00 for one set will be required for the bid documents. Bid documents will be available for review at the architects office, and the Plan Rooms of Houston, Austin, and San Antonio, Texas.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES. To be run in the Houston Chronicle on Sunday, November 15, 1998 and Sunday, November 29, 1998.

TRD-9817675
Judy Ponder
General Counsel
General Services Commission
Filed: November 18, 1998

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Request for Qualifications for Architectural/Engineering Services, Project Number 99–016–303

RENOVATION OF STEPHEN F. AUSTIN BUILDING, AUSTIN, TEXAS

General: The General Services Commission (GSC) is seeking Requests for Qualifications for Architectural/Engineering firms interested in performing design services for the above referenced project.

Project Description: Project Number 99-016-303, consists of total renovation of existing facility including asbestos abatement.

The estimated construction budget for the Project is $13,600,000. Estimated project duration is 48 months.

Selection Process: Selection of prime design professionals shall be made in accordance with Subchapter E, Chapter 2166, Texas Government Code, the Commission's rules and other applicable authority.

This is a qualifications based selection process. Interviews will be offered to firms that meet or exceed the minimum qualifications established by the Commission in its rules.

Evaluation factors for selection of firms will be based on written statements of interest, completed A/E Questionnaires, and interviews, as follows: (1) Experience and qualifications of the firm in the type of work required. (2) Professional qualifications of individuals to be assigned to the project. (3) Present workload and capabilities of the firm to accomplish the contemplated work within the required time limit. (4) Capability of the firm for use AutoCAD or translatable into AutoCAD format. (5) Cost control effectiveness. (6) Past experience, if any, of the firm with respect to performance of state funded projects. (7) Historically nderutilized Businesses (HUB) subconsultant participation.

Submissions Required: To be considered for an interview for this project, a firm must submit a letter of interest and qualifications which acknowledges the notice of this interview opportunity and a completed Architect/Engineer Questionnaire. All responses to this posting shall be evaluated for minimum qualifications.

Schedule: The schedule for this process is as follows: (1) Posting on the Texas Marketplace - November 16, 1998. (2) Letters of interest and qualifications, with completed A/E questionnaire, due by close of business (5:00 pm, CDT), November 30, 1998. (3) Interviews - end of December, 1998, to be scheduled with invited firms. All interviews will be conducted at the Central Services Building, 1711 San Jacinto, Austin, Texas.

Letters of interest and qualifications and completed A/E questionnaires should be delivered to, Mr. Bobby Huston, Bid Tab Room, Room 180, Central Services Building, 1711 San Jacinto Blvd., Austin, Texas 78701 on or by the date and time specified above. The envelope or outside package for a submission must be clearly marked with the RFQ Number and state that the package contains letter of interest.

Design Professional Contract: GSC intends to enter into negotiated, fixed fee contracts for basic services of prime design, from schematic design through warranty inspection. The fees payable by GSC are regulated by the terms and conditions of the Appropriations Act, Article IX-77, Section 48 (Acts of the 75th Legislature, 1997).

Reimbursables available under a contract are for extra sets of documents in excess of 25 bid sets and license or permit application fees for ADA inspections. All other costs incurred by the design professional, including subconsultant costs, are considered a part of basic services under the contract.

Miscellaneous: Firms shall bear the entire cost of responding to this posting, participating in a subsequent interview and negotiating a contract, if selected. GSC has no responsibility for costs incurred by participants.

Late submittals shall not be considered.

GSC reserves the right to reject all responses, to abandon this RFQ process and to obtain needed services through other means. GSC reserves the right to award more than one Project to a qualified firm.

GSC considers all information, documentation, and other materials submitted from firms to be non-confidential and subject to disclosure pursuant to Chapter 552, Texas Government Code (Public Information Act), after close of this solicitation process.

To be run in the Austin American Statesman, San Antonio Express, Houston Chronicle, and the Dallas Morning News.

To be run on Sunday, November 15 and Sunday, November 22.

TRD-9817663
Judy Ponder
General Counsel
General Services Commission
Filed: November 17, 1998

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Dallas	Pet Net Pharmaceutical Services LLC	L05193	Dallas	0	11/03/98
Fairfield	East Texas Medical Center- Fairfield	L05195	Fairfield	0	11/04/98

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Alvin	Amoco	L01422	Alvin	50	11/02/98
Alvin	Esquistar Chemicals, LP	L03363	Alvin	17	11/10/98
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	53	11/03/98
Arlington	Health Images Texas dba HealthSouth Diag. Cntr./Arlin	L05033	Arlington	9	11/06/98
Austin	Daughters of Charity Health Services of Austin	L00268	Austin	60	11/06/98
Austin	Seton Medical Center	L02896	Austin	47	11/02/98
Bowie	Bowie Hospital Authority	L02327	Bowie	10	11/02/98
Conroe	Conroe Hospital Corporation dba Columbia Regional Med	L01769	Conroe	48	11/03/98
Dallas	Texas Oncology PA - Sammons Cancer Center	L04878	Dallas	8	11/06/98
Dallas	Texas Cardiology Consultants	L04997	Dallas	8	11/03/98
Denton	International Isotopes Inc.	L05159	Denton	4	11/09/98
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	6	11/10/98
Fredericksburg	Fredericksburg Imaging Center @ Hill Country Memorial	L03516	Fredericksburg	15	11/03/98
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	11	11/06/98
Houston	Columbia Hospital Corporation of Houston	L02038	Houston	32	11/03/98
Houston	Houston NorthWest Radiotherapy Center	L02416	Houston	18	11/13/98
Irving	Columbia Medical Center of Las Colinas Inc.	L05084	Irving	3	11/10/98
Kingwood	KPH Consolidation Inc. dba Columbia Kingwood Plaza	L04482	Kingwood	16	11/06/98
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	4	11/06/98
Midland	Associates of Midland Cardiovascular & IM PC	L04729	Midland	5	11/09/98
Midland	Norm Decon Services, LLC	L04917	Midland	5	11/10/98
N. Richland Hills	Columbia North Hills Hospital Subsidiary LP	L03455	North	23	11/06/98
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	132	11/10/98
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	3	11/02/98
Sherman	Columbia Medical Center of Sherman Subsidiary lp	L02372	Sherman	19	11/02/98
Sugar Land	Selective Tools, Inc.	L04669	Sugar Land	5	10/31/98
Sweeny	Phillips Petroleum	L00337	Sweeny	38	11/02/98
ThroughoutTexas	Maxim Technologies, Inc.	L00299	Houston	102	11/13/98
ThroughoutTexas	Westhollow Technology Center	L02116	Houston	37	11/06/98
ThroughoutTexas	BIX Testing Laboratories, Inc.	L02143	Baytown	86	11/13/98
ThroughoutTexas	Radiographic Specialists, Inc.	L02742	Houston	40	11/12/98

CONTINUED ADMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ThroughoutTexas	Enprotec, Inc.	L04266	Abilene	8	11/02/98
ThroughoutTexas	Aluminum Company of America	L04316	Rockdale	13	11/09/98

ThroughoutTexas	Cobblestone Engineering, Inc.	L04789	Harlingen	1	11/10/98
ThroughoutTexas	Raven Inspection & Testing	L056	Huffman	0	11/12/98
Tyler	University of Texas Health Center at Tyler	L04117	Tyler	18	11/06/98
Victoria	E.I. Dupont De Nemours & Company	L00386	Victoria	68	11/10/98
Waco	Hillcrest Baptist Medical Center	L00845	Waco	61	11/09/98
Weslaco	Knapp Medical Center	L03290	Weslaco	24	11/09/98
Woodlands	Lamco & Associates	L05152	Woodlands	1	11/09/98
TYLER	East Texas Medical Center	L00977	Tyler	73	11/12/98

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Abilene	Nc-Schi Inc.	L02434	Abilene	54	11/10/98
Dallas	Vencor Hospital-Dallas	L03503	Dallas	12	11/10/98
Houston	Valco Instruments Company, Inc.	L01572	Houston	19	11/02/98
Mesquite	Medical Center of Mesquite	L02428	Mesquite	23	11/02/98
ThroughoutTexas	Law Engineering and Environmental Services, Inc.	L02453	Houston	24	10/28/98
ThroughoutTexas	Cotton's Inspection Service, Inc.	L02869	Odessa	14	11/10/98
ThroughoutTexas	Environmental Drilling Services, Inc.	L04209	Austin	8	11/13/98
ThroughoutTexas	Q C Laboratories, Inc.	L04750	Houston	5	11/02/98

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
New Caney	Brookshire Center	L05095	New Caney	1	11/10/98

EXEMPTIONS ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Tyler	Doctors Memorial Hospital	L03505	Tyler	0	11/10/98

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public

or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 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 Agency 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.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9817676
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 18, 1998

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: MedMark, Inc., Dallas, G01533: Gulf Coast Lead Check, Corpus Christi, G02060; Parsons Engineering Science, Incorporated, Austin, L04956.

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, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9817603
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 16, 1998

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Texas Department of Housing and Community Affairs

Notices of Administrative Hearings

Manufactured Housing Division

Wednesday, December 2, 1998, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N. Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Tryson L. Brock dba Bulldog Trucking to hear alleged violations of the Act, §7(d) and the Rules §80.125(e) regarding obtaining, maintaining or possessing a valid installer's license. SOAH 332-98-2107. Department MHD1997003505C and MHD1997003063D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-9817686
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 1998

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Manufactured Housing Division

Wednesday, December 9, 1998, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N. Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. John Pogue dba AAA Manufactured Homes, Inc. to hear alleged violations of the Act, §14(f) and §14(j) and the Rules §§80.64(b), 80.131(b) and 80.132(6) regarding not properly complying with the initial report and warranty orders of the Director and providing the Department with copies of completed work orders, in a timely manner; also for removing a portion of the marriage wall of a manufactured home without following the alteration procedure. SOAH 332-98-2108. Department MHD1998000563W.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-9817685
Daisy Stiner
Acting Executive Director

Texas Department of Housing and Community Affairs
Filed: November 18, 1998

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Notice of Application Availability

Community Services Section

Emergency Shelter Grants Program

The Texas Department of Housing and Community Affairs (TDHCA), through its Emergency Shelter Grants Program (ESGP), announces the imminent availability of FY 1999 funds. ESGP is authorized by the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. §11371 *et. seq.*). TDHCA will award funds on a competitive basis for the following activities and to the following applicants:

II. ELIGIBLE ACTIVITIES:

(A) Rehabilitation or conversion of facilities for use as emergency shelter for the homeless;

(B) For the provision of essential services to the homeless in connection with the operation of an emergency shelter for the homeless;

(C) For the payment of maintenance, operations, and furnishings in connection with the operation of an emergency shelter for the homeless;

(D) For homelessness prevention activities.

III. ELIGIBLE APPLICANTS

(A) Units of general local government (counties or incorporated cities), or

(B) Private non-profit organizations providing assistance to the homeless that have obtained certification from the relevant unit of general local government approving the proposed project.

TDHCA has set a minimum grant amount of $30,000 and a maximum amount of $100,000 for each project. Applicants must plan to utilize ESGP funds for eligible activities as set forth in the Department of Housing and Urban Development (HUD) implementing regulations (24 Code of Federal Regulations, Part 576 as amended); be able to supplement (match) the ESGP grant amount with an equal amount of resources; and ensure that the entire grant amount can be obligated within 180 days after grant award from TDHCA. Environmental assessment requirements as set forth in 24 Code of Federal Regulations, Part 58 apply to ESGP.

If you have not already requested an FY 1999 ESGP Application packet, fax your request to 512/475-3539 or write to: Community Services Section, Attention: Aileen Cavazos, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941. Copies of the Application may also be downloaded from the Department's web site at http://www.genesis.tdhca.state.tx.us.

Applications must be received by TDHCA no later than 5:00 p.m., February 17, 1999. Applications received after this time will not be considered for funding. The Application packet contains a specific timetable of events and deadlines. Because of the critical deadlines HUD has placed on the obligation of ESGP funds, potential recipients should begin planning now for the possible receipt and obligation of ESGP funds.

The Department will hold its annual Application workshop on Tuesday, January 12, 1999 from 8:00 a.m. to 4:00 p.m. in Austin, Texas at the Holiday Inn South located at 3401 South IH 35. Details about the workshop and the workshop registration form are included in the Application.

Questions or requests for additional information may be directed to the Community Services Section, Texas Department of Housing and Community Affairs, Attention: E.E. Fariss 512/475-3897, Dyna Lang 512/475-3905, or Stephanie Huie 512/475-4618.

TRD-9817687
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 1998

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Request for Proposals

The Texas Department of Housing and Community Affairs announces a Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education, and to certify participants as homebuyer education providers.

The Texas Department of Housing and Community Affairs (TDHCA) is seeking proposals to provide training to nonprofit organizations throughout the State of Texas. Such nonprofit organizations may include Texas Agricultural Extension Agents, units of local governments, faith-based organizations, Community Housing Development Organizations (CHDOs), Community Development Corporations (CDCs), Community Based Organizations (CBOs), and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post purchase homebuyer education, and to certify participants as providers. TDHCA will review applicants and pre-select the participants. At a minimum, two 3-day training classes with a minimum of 25 participants per class will be required. Training topics should include, but are not limited to the following:

pre-purchase and post-purchase counseling

delinquency and default counseling

delinquency intervention

how to access affordable housing single family mortgage products

how to reach traditionally underserved populations (including lower income persons/households, persons with disabilities, and persons living in colonias)

ethics issues for counselors

track development (e.g. fast, regular)

fair housing/ lending laws

Proposals must be received by TDHCA no later than 5:00 p.m. on Friday January 15, 1999.

Faxed or emailed applications will not be accepted.

Proposals will be selected based on criteria outlined in the proposal package.

Awards will be made as grants. The Department's Board reserves the right to change the award amount, or to award less than the requested amount.

For more information or to request a proposal package, please contact the Office of Strategic Planning/Housing Resource Center at

(512) 475-3972 or email sdale@tdhca.state.tx.us. Please direct your proposals to:

Texas Department of Housing and Community Affairs

Office of Strategic Planning/Housing Resource Center

Attn.: John Garvin

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address

507 Sabine, Suite 800

Austin, Texas 78701

Questions concerning this Request for Proposal may be directed in writing to TDHCA at the above address, attention John Garvin, Director, Office of Strategic Planning.

Individuals who require auxiliary aids or services should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-9817688
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 1998

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Texas Department of Human Services

Notice of Award-Integrated Long Term Care (LTC) Network Pilot

In accordance with the provision of Chapter 2254, Subchapter B, of the Texas Government Code, the Texas Department of Human Services announces this notice of consultant contract award. The invitation for offers for consulting services was published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8564). This publication was later amended. Amendment appeared in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8894).

Description of Services: The offeror will evaluate the feasibility of the delivery of long term care (LTC) services through an integrated model in which the entire continuum of LTC services are provided. These services include in part: personal attendant care, adult day care, residential care, community based alternative waiver services, nursing facility care, etc. The offeror will be expected to conduct a study to determine the feasibility of integrating LTC services under a LTC Network model to improve the coordination of services among providers of LTC services.

Name of Consultant: The contract for consultant was awarded to Michael Bailit, President, Bailit Health Purchasing, LLC, Needham, MA 02492-2240.

Terms and Amount: The contract is effective November 9, 1998 through March 21, 1999. The amount of the contract $160,895.00

Report Due Date: A report is due March 5, 1999.

TRD-9817654
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: November 17, 1998

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Public Meeting on the Integrated Long Term Care (LTC) Network Pilot-Feasibility Study

The Texas Department of Human Services will conduct a public meeting to provide further information and receive input on the feasibility of an Integrated Long Term Care (LTC) Network Pilot. The public meeting will be held on December 4, 1998, at 9:00 a.m. at the McCreless Library (across from McCreless Mall), 1023 Ada, San Antonio, Texas.

The Department has contracted with Bailit Health Purchasing (BHP), LLC, to evaluate the feasibility of contracting for LTC services through an integrated delivery system which offers the entire continuum of LTC services. The public meeting will be an opportunity for the public to meet BHP representatives, be informed of the feasibility study's stages and additional opportunities for input, and share initial comments with the consultants.

Contact Person: Please contact Maria Garcia Montoya, MC W-516, at P.O. Box 149030, Austin, Texas 78714-9030, (512) 438- 3155.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Edna Reich, (512) 438-3224, by December 1, 1998, so that appropriate arrangements can be made.

TRD-9817679
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: November 18, 1998

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by the Republic Group of Companies proposing to use a rating manual relative to classifications and territories different than promulgated by the Commissioner of Insurance pursuant to TEXAS INSURANCE CODE ANNOTATED Article 5.101, §3(l). They are proposing a companion policy discount of 10% that is applied to a personal auto policy premium when an insured has a personal auto policy and a homeowners policy with any member of the Republic Group of Companies, to include Republic Underwriters Insurance Co., Southern Insurance Co., and Republic Lloyds Insurance Co. The discount is applied to the total personal auto premium excluding the premium for Uninsured/Underinsured Bodily Injury and Property Damage.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Senior Associate Commissioner, Rose Ann Reeser, at the Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9817662
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 17, 1998

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Third Party Administrators

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of SEGUROS MONTERREY AETNA, S. A. to SEGUROS MONTERREY AETNA, S. A. GRUPO FINANCIERO BANCOMER, a Mexican casualty company. The home office is located in Mexico City, Mexico.

Application for admission to Texas for KEMPER INDEPENDENCE INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Long Grove, Illinois.

Application for admission to Texas for KEMPER AUTO & HOME INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Long Grove, Illinois.

Application for incorporation in Texas for U.S. RENAL - TEXAS, INC., a domestic HMO. The home office is located in Dallas, Texas.

Application for incorporation in Texas for COOK CHILDREN'S HEALTH PLAN, a domestic HMO. The home office is located in Fort Worth, Texas. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9817485
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: November 12, 1998

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Texas State Library and Archives Commission

Quarterly Report of Consultant Contract Reports Received by the Texas State Library

By law (V.T.C.A., Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed $10,000. Within 10 days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, §2254.036, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the *Texas Register*.

Below is a list of materials received for the third quarter of 1998. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Office of Attorney General Consultant: David M. Griffith and Associates, Ltd. Title: (1) Cost allocation plan for State of Texas Office of the Attorney General, indirect cost allocation plan for FY 1999: based on budgeted expenditures for the fiscal year ending August 31, 1999; (2) Cost allocation plan for State of Texas Office of the Attorney General, final indirect cost plan for FY 1997 : based on actual expenditures for the fiscal year ending August 31, 1998

Agency: Comptroller of Public Accounts Consultant: WCL Enterprises Title: School performance review, Hamilton Independent School District: a report from the Texas Performance Review

Agency: Education Agency Consultant: Gallaudet University, Gallaudet Research Institute Title: 1997-1998 school year final report: Texas state survey, deaf and hard of hearing students

Agency: Natural Resource Conservation Commission Consultant: Coastal Bend Bays Foundation Title: Final report [on the "summary of management conference responses to public comments on the Jan. '98 draft coastal bend bays plan and implementation strategy"]

Agency: Stephen F. Austin State University Consultant: NCHEMS Management Services (NMSI) Title: Increasing the entering student admissions profile at Stephen F. Austin University: a feasibility study

TRD-9817529
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: November 13, 1998

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding TEXAS A&M UNIVERSITY, Docket Number 98-0193-IWD-E; Permit Number 02836 (Expired); Enforcement ID Number 12233 on October 26, 1998 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAFARGE CORPORATION, Docket Number 98-0130-IWD-E; Permit Number 01730; Enforcement ID Number 8122 on October 26, 1998 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512)239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DALLAS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #6, Docket Number 98-0221-PUBLIC WATER SUPPLY-E; PUBLIC WATER SUPPLY Number 0570032; Enforcement ID Number 12078 on October 26, 1998 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512)239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAVERICK COUNTY, Docket Number 97-0888-PUBLIC WATER SUPPLY-E; PUBLIC WATER SUPPLY Number 1620003; CCN Number 10216; Enforcement ID Number 6681 on October 26, 1998 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, Enforcement Coordinator at (512)239-

6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CALVIN PAREO DBA PAREO DAIRY, Docket Number 97-0902-AGR-E; Enforcement ID Number 11708 on October 26, 1998 assessing $19,180 in administrative penalties with $18,580 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512)239-0678 or Bill Main, Enforcement Coordinator at (512)239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JACK MILLER, Docket Number 97-0916-AGR-E; No TNRCC Permit: Enforcement ID Number 11664 on October 26, 1998 assessing $8,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512)239-3506 or Pamela Campbell, Enforcement Coordinator at (512)239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RON AND CHERYL MCGLOTHLIN, Docket Number 98-0030-EAQ-E; Enforcement ID Number 12110 on October 26, 1998 assessing $1,000 in administrative penalties with $200 deferred.

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

An agreed order was entered regarding HILL COUNTRY BIBLE CHURCH, Docket Number 98-0353-EAQ-E; Enforcement ID Number 12375 on October 26, 1998 assessing $1,000 in administrative penalties with $200 deferred.

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

A default order was entered regarding SCRAP TIRE RECYCLING, INCORPORATED, Docket Number 97-0391-MSW-E; MSW 44096; Enforcement ID Number 2956 on October 26, 1998 assessing $7,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary R. Risner, Staff Attorney at (512)239-6224 or Tim Haase, Enforcement Coordinator at (512)239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DEL RIO, Docket Number 97-0604-MSW-E; MSW Landfill 207A; Enforcement ID Number 2614 on October 26, 1998 assessing $22,400 in administrative penalties with $4,480 deferred.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512)239-3506 or Carol Piza, Enforcement Coordinator at (512)239-6729, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D INTERNATIONAL, INCORPORATED, Docket Number 97-1011-PST-E; TNRCC ID Number 35350; Enforcement ID Number 4824 on October 26, 1998 assessing $18,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512)239-5915 or Gloria Stanford, Enforcement Coordinator at (512)239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MS. LINDA WILLIAMS, Docket Number 97-1147-PST-E; PST Facility ID Number Unregistered; Enforcement ID Number 11883 on October 26, 1998.

Information concerning any aspect of this order may be obtained by contacting Cameron Lopez, Enforcement Coordinator at (817)469-6750 or Paula Spears, Enforcement Coordinator at (512)239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL PASO - LOS ANGELES LIMOUSINE EXPRESS, Docket Number 97-1071-PST-E; Facility Number 0011846; Enforcement ID Number 11875 on October 26, 1998 assessing $2,400 in administrative penalties with $480 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Phillips, Staff Attorney at (512)239-0615, Rebecca Cervantes, Enforcement Coordinator at (915)778-9634 or Gayle Zapalac, Enforcement Coordinator at (512)239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HSUAN YU DBA TED'S AUTO, Docket Number 98-0121-AIR-E; Account Number DB-4830-Q; Enforcement ID Number 12200 on October 26, 1998 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRIME SERVICES DBA PRIME EQUIPMENT, Docket Number 98-0526-AIR-E; Account Number EE-1153-K; Enforcement ID Number 12348 on October 26, 1998 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAMEZ NOUR DBA KWIK KAR LUBE AND TUNE, Docket Number 98-0120-AIR-E; Account Number DB-4829-B; Enforcement ID Number 12201 on October 26, 1998 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ERNESTO HERNANDEZ DBA PAISANO TRUCK STOP, Docket Number 98-0178-AIR-E; Account Number EE-1054-N; Enforcement ID Number 12192 on October 26, 1998 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)239-

1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN RAFIZADEH DBA JR'S AUTO REPAIR, Docket Number 98-0568-AIR-E; Account Number DB-4768-T; Enforcement ID Number 12358 on October 26, 1998 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARRETT SCALES, Docket Number 97-0434-LII-E; Not Licensed; 12111 on October 26, 1998 assessing $2500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF SANGER, Docket Number 98-0243-MWD-E; Permit Number 10271-001; Enforcement ID Number 12205 on October 30, 1998 assessing $12,500 in administrative penalties.

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

An agreed order was entered regarding HENRY COMPANY, Docket Number 98-0697-AIR-E; Account Number HE-1667-A; Enforcement ID Number 12322 on October 30, 1998 assessing $5,000 in administrative penalties with $1,000 deferred.

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

TRD-9817650
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: November 17, 1998

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Notice of Application to Appropriate Public Waters of the State of Texas

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued October 22, 1998 and November 9, 1998, respectively.

Application No.4212C (Permit No. 3913); CAPITOL AGGREGATES, LTD., PO Box 6230, Austin, TX 78762, applicant, seeks to amend permit No. 3913, as amended, by a) increasing the amount of water authorized for diversion per annum from 70 acre-feet to 200 acre-feet, b) adding a diversion point downstream of the existing reservoir, c) increasing the total maximum diversion rate to 3000 gpm (6.68 cfs) and d) extending the expiration date included in the permit to be at least 10 years from the date of issuance of this amendment. The permit currently authorizes, with a priority date of May 3, 1982, and an expiration date of December 31, 2002, diversion and use of not to exceed 70 acre-feet of water per annum at a maximum diversion rate of 0.7 cfs (300 gpm) from the perimeter of an existing 70 acre-feet capacity reservoir on the Middle Fork San Gabriel River, tributary of the North Fork San Gabriel River, tributary of the San Gabriel River, tributary of the Brazos River, Brazos River Basin, for mining, construction and industrial purposes in Williamson County.

Application No. 5618; DEVERS CANAL RICE PRODUCERS ASSOCIATION, INC., PO Box 276, Devers, TX 77538, applicant, seeks to divert and use 30,000 acre-feet of water per annum from the Trinity River, Trinity River Basin, to irrigate a maximum of 7,500 acres per annum in Liberty, Chambers and Jefferson Counties, Texas. Water will be diverted at a maximum rate of 300 cfs (135,000 gpm) from the east bank of the Trinity River. This diversion rate will not exceed 300 cfs in combination with applicant's existing diversion rate as authorized in Permit No. 5271A. The diversion point would be located approximately 7.5 miles south of Liberty, Liberty County, Texas. The requested water will be used to replace existing supplies from the Trinity River that will no longer be available to the applicant due to the expiration of temporary water supply contracts. Applicant is not requesting an increase in the size of their historical irrigation operation. Applicant is requesting that if the water availability analysis shows that there is not 30,000 acre-feet of water available for appropriation on a permanent basis, that a perpetual right be granted for the amount of water available on a permanent basis and that a term only be applied to the amount of water not available on a permanent basis. As the applicant's service area includes land in the adjoining Neches-Trinity Coastal Basin, this application also requests an interbasin transfer. However, as this is an adjoining coastal basin, this application will not be subject to Senate Bill 1 interbasin transfer requirements. This application is subject to the Coastal Zone Management Program.

The Executive Director may approve the applications unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 30 days after newspaper publication of the notice of application. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the application number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9817649
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: November 17, 1998

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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, 1998. 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 27, 1998. 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: City of El Paso; DOCKET NUMBER: 98-0544-AIR-E; IDENTIFIER: Account Number EE-1233-L; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fire truck maintenance shop; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by supplying and/or dispensing gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(2)COMPANY: Zosimo Corsiga; DOCKET NUMBER: 98-0651-AIR-E; IDENTIFIER: Account Number DB-4769-R; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: state inspection station; RULE VIOLATED: 30 TAC §114.50(a)(1) and the Act, §382.085(b), by issuing motor vehicle inspection certificates without conducting all emission tests; PENALTY: $600; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Dino Bernardo dba Dino's Automotive; DOCKET NUMBER: 98-0570-AIR-E; IDENTIFIER: Account Number DB-4843-H; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: state inspection station; RULE VIOLATED: 30 TAC §114.50(a)(1) and the Act, §382.085(b), by issuing two motor vehicle inspection certificates without conducting all emission tests; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: Duke Energy Field Services, Inc.; DOCKET NUMBER: 98-0885-AIR-E; IDENTIFIER: Account Number WH-0035-K; LOCATION: Burkburnett, Wichita County, Texas; TYPE OF FACILITY: crude oil pipeline breakout station; RULE VIOLATED: 30 TAC §122.130(b), §122.121, and the Act, §382.054 and §382.085(b), by failing to submit the initial federal operating permit application by February 2, 1998 and by operating affected units without a federal operating permit having been issued; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Rod Weeks, (915) 698-9674; REGIONAL OFFICE: 209 South Danville, Suite B200, Abilene, Texas 79605-1491, (915) 698-9674.

(5)COMPANY: Marco D. Fernandez; DOCKET NUMBER: 98-0095-OSI-E; IDENTIFIER: Enforcement Identification Number 12059; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: on-site sewage system; RULE VIOLATED: 30 TAC §285.13(c)(2)(A) and §285.107(a)(6), by not complying with all state regulatory requirements relevant to the installation of on-site sewage facilities; PENALTY: $250; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(6)COMPANY: Fina Oil and Chemical Company; DOCKET NUMBER: 98-0642-AIR-E; IDENTIFIER: Account Number JE-0005-H; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(a), §101.20(3), TNRCC Permit Number 9195A, Prevention of Significant Deterioration Permit Number PSD-TX-453M6, and the THSC, §382.085(b), by allowing the flame temperature of the thermal reactor at the Sulfur Recovery Unit Number II to drop below 2,200 degrees Fahrenheit when processing sour water stripper gas and by failing to route all emissions from sulfur loading racks to the tail gas incinerator; and 30 TAC §115.352(2) and the THSC, §382.085(b), by failing to repair valve number 3024 at the LPG Loading Unit within 15 days after the date that the leak was discovered; PENALTY: $26,250; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7)COMPANY: Genoa Mining, Inc.; DOCKET NUMBER: 98-0709-AIR-E; IDENTIFIER: Account Number HG-0271-G; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: sand pit; RULE VIOLATED: 30 TAC §111.143(1) and (3), §111.147(1)(A), and the Act, §382.085(b), by failing to apply water, suitable chemicals, oil, asphalt, or covering to control dust emissions from open-bodied trucks and unpaved surfaces; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8)COMPANY: Blake Kozar dba Mister B's; DOCKET NUMBER: 98-0593-PWS-E; IDENTIFIER: Public Water Supply Number 0130062; LOCATION: Skidmore, Bee County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (b), §290.103(5), and the Code, §341.033(d), by failing to submit monthly water samples for bacteriological analysis, by failing to submit repeat bacteriological samples, and by failing to provide public notification for failure to collect bacteriological samples and repeat samples; 30 TAC §334.21 and the Code, §26.358(d), by failing to pay the underground storage tank registration annual fee; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(9)COMPANY: New Braunfels Independent School District; DOCKET NUMBER: 97-1081- EAQ-E; IDENTIFIER: Enforcement Identification Number 12004; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: library; RULE VIOLATED:

30 TAC §213.4(a), by failing to submit an Edwards Aquifer protection plan for approval before commencing construction of the New Braunfels High School library; PENALTY: $900; ENFORCEMENT COORDINATOR: Mary Smith, (512) 239-4484; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(10)COMPANY: Village Farms of Marfa, L.L.P, Cogentrix of Marfa, Inc. and Village Farms of Delaware, L.L.C.; DOCKET NUMBER: 98-0518-PWS-E; IDENTIFIER: Public Water Supply Number 1890013; LOCATION: near Marfa, Presidio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(a), (e), (f)(1) and (2), (f)(2)(B), (h), and the Code, §341.033(a), by failing to submit plans and specifications, by failing to ensure that the system is under the direct supervision of a "D" certified water works operator, by failing to provide mechanical disinfection equipment, by failing to provide a chlorine test kit which uses the diethyl-p- phenylenediamine method, by failing to record the results of chlorine residual tests taken from the distribution system, and by failing to provide calcium hypochlorite disinfectant at the facility for use when making repairs, setting meters, and disinfecting new mains; 30 TAC §290.41(c)(3)(A), (J), and (K), by failing to submit well completion data, by failing to provide a concrete sealing block, and by failing to provide the well vent with a screened casing well; 30 TAC §290.43(c) and (c)(3), by failing to provide a ladder to facilitate routine inspection of ground storage tank and by failing to provide the ground storage tank with an overflow pipe that conforms with current American Water Works Association standards; 30 TAC §290.45(d)(2)(A), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.106(a)(1) and the Code, §341.033(d), by failing to submit the required number of water samples for bacteriological analysis; PENALTY: $5,438; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(11)COMPANY: W.D. Wickersham dba Wicks Sports Bar; DOCKET NUMBER: 98-0597- PWS-E; IDENTIFIER: Public Water Supply Number 1012793; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.105, by exceeding the maximum contaminant level for total coliform; and 30 TAC §290.106(b)(5), by failing to collect and submit the appropriate number of repeat water samples for bacteriological analysis; PENALTY: $469; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9817646
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: November 17, 1998

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Notice of Request for Nominations

The Texas Natural Resource Conservation Commission (TNRCC or Commission) is soliciting nominations to fill four official members of the thirteen member the Waste Reduction Advisory Committee. The TNRCC Commissioners, at an Agenda meeting, will consider candidates for the advisory committee.

The Waste Reduction Advisory Committee (WRAC) was established by the 71st Texas Legislature in 1989 under the Texas Health and Safety Code, §361.0215 to advise the Commission on matters dealing with pollution prevention and waste reduction programs. The WRAC has been instrumental in creating a nationally recognized state pollution prevention program, including the development and monitoring of the Waste Reduction Policy Act of 1991, and voluntary environmental programs such as CLEAN TEXAS 2000. The WRAC helped establish the Texas Environmental Excellence Awards, and is currently working to promote pollution prevention integration into the agency's regulatory programs.

The WRAC is composed of nine official members who offer a balanced representation of environmental and public interest groups and the regulated community. The four ex officio positions were established by the Commission in 1992 and 1995 to provide additional participation from local and regional government and state legislators. Nominations are being solicited for four of the nine official members of the committee.

The WRAC advises the commission on various activities including: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the development of public awareness programs on household hazardous waste programs; and the provision of technical assistance to local governments for development of waste management strategies. The WRAC also reviews and evaluates pollution prevention programs to assist in effective implementation of the state's waste management hierarchy.

The WRAC operates under the requirements of the Texas Administrative Code, Title 30, Part I, Chapter 5, entitled Advisory Committees. The WRAC meets a minimum of four times per year and as needed. Members may not miss three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. The meetings usually last one full day and are held at the TNRCC in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation. The WRAC must report in writing to the TNRCC Commission a minimum of once per year, unless otherwise directed.

The TNRCC Commissioners invite nominations for the following four positions. Each nomination should include a brief cover letter and biographical summary which includes the individual's experience and qualifications and an agreement to serve on the committee.

Please submit nomination(s) for the following vacancies to maintain a balanced representation on the WRAC:

1. Two representatives from an environmental or public interest group; and

2. Two representatives from the regulated community;

Written nominations must be received in the TNRCC Office of Pollution Prevention and Recycling by 5:00 p.m. on December 18, 1998. Nominations should be directed to: Ken Zarker, Manager, Strategic Partnerships Program, Office of Pollution Prevention and Recycling (MC 112), TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, E-mail to kazarker@tnrcc.state.tx.us or fax to (512) 239-3165. Questions regarding the Waste Reduction Advisory Committee can be directed to Mr. Zarker at (512) 239-3145.

TRD-9817645
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: November 17, 1998

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Texas Board of Pardons and Paroles

Correction of Error

The Texas Board of Pardons and Paroles adopted amendments to §§141.57, 145.1, and 150.55, and new §141.60, §141.61. The rules appeared in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10655–10657).

The rules should have the effective dates of October 20, 1998

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Public Utility Commission of Texas

Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 13, 1998, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Revise the Cellular Mobile Telephone Interconnection Tariff Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20090.

The Application: SWBT filed an application to revise its Cellular Mobile Telephone Interconnection Tariff. This revision proposes to introduce Type 2C 911 Interconnection Circuits, which are direct connections from the Cellular Mobile Carrier's switch to SWBT's 911 tandem. From the 911 tandem, the emergency traffic is then routed to the appropriate Public Safety Answering point for disposition.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by December 10, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9817666
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 17, 1998

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 9, 1998, AustiCo Telecommunications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60040. Applicant intends to expand its geographic area to include the Dallas/Fort Worth Metroplex and vicinity.

The Application: Application of AustiCo Telecommunications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 20076.

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 commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than December 2, 1998. You may contact the PUC Office of Customer Protection 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 20076.

TRD-9817540
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 1998

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Notice of Application to Amend IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 2, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval to amend an intraLATA equal access implementation plan.

Project Number: Application of Border to Border Communications, Inc. to Amend IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 20059.

The Application: On November 2, 1998, Border to Border Communications, Inc. (BTB or the Company) filed a request to amend its intraLATA equal access implementation plan filed pursuant to P.U.C. Substantive Rule §23.103. The Company's plan was approved on October 19, 1998, in Project Number 19733, Application of Border to Border Communications, Inc. for Approval of IntraLATA Equal Access Implementation Plan. BTB has since determined that the planned implementation date of January 1, 1999, should be delayed until January 8, 1999, to provide additional time for customer convenience in contacting the Company during the New Year holiday.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before December 9, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20059.

TRD-9817614
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 1998

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Accord Medical Management in San Antonio, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's (SWBT) Notice of Intent to File a New PLEXAR-Custom Service for Accord Medical Management in San Antonio, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20086.

The Application: SWBT is requesting approval for a new PLEXAR-Custom service for Accord Medical Management in San Antonio, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station

lines. The designated exchange for this service is the San Antonio exchange, and the geographic market for this specific PLEXAR-Custom service is the San Antonio LATA.

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 Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9817613
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 1998

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Notice of Petition for Rulemaking

The Public Utility Commission of Texas (commission) received a petition for rulemaking from Texas Payphone Association, Inc. The petition was filed November 12, 1998, and has been designated as Project Number 20088,*Petition of Texas Payphone Association, Inc. to Amend Substantive Rule §23.150* (relating to Administration of Texas Universal Service Fund (TUSF). The petition requests that the commission amend §23.150(g)(5) concerning recovery of assessments to add payphone providers to the list of retail customers from which telecommunications providers may not recover the amount of its TUSF assessment. The petition states that, as a result of being considered both a telecommunications provider and a retail customer of other telecommunications providers, payphone providers are required to report and pay TUSF assessments and are also potentially subject to pass-through recovery from other telecommunications providers subject to the TUSF assessment, resulting in a potential double assessment.

Comments on the petition may be filed not later than 3:00 p.m., December 18, 1998. Persons who are interested in obtaining a copy of the petition for rulemaking may do so by contacting the commission's Central Records Office, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 20088 - *Petition of Texas Payphone Association, Inc. to Amend Substantive Rule §23.150.*

TRD-9817681
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 1998

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Public Notice of Amendment to Interconnection Agreement

On November 12, 1998, Southwestern Bell Telephone Company and Premiere Network Services, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20087. 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20087. 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 15, 1998, 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, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection 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 20087.

TRD-9817658
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 17, 1998

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Public Notices of Interconnection Agreements

On November 5, 1998, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and United States Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20062. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20062. 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 14, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission 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 docket or who wish to comment on the 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 Public Utility Commission Office of Customer Protection 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 20062.

TRD-9817516
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 1998

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On November 12, 1998, Tech Telephone Company, Limited Partnership and GTE Southwest, Inc., 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20085. 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20085. 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 15, 1998, 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, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection 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 20085.

TRD-9817657
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 17, 1998

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On November 13, 1998, Santa Rose Telephone Cooperative, Inc. and GTE Southwest, Inc., 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20093. 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20093. 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 15, 1998, 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, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection 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 20093.

TRD-9817659
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 17, 1998

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Texas Council on Purchasing from People with Disabilities

Memorandum of Agreement between the Texas Council on Purchasing from People with Disabilities and TIBH Industries, Inc.

The Texas Council on Purchasing from People with Disabilities (Texas Council) submits this Memorandum of Agreement between the Texas Council and The Designated Central NonProfit Agency, TIBH Industries, Inc. ("TIBH") for notification to all community rehabilitation programs and supportive organizations on behalf of the disabled community throughout the State of Texas. This agreement was the result of a mediated settlement agreement between the Texas Council and TIBH approved by both parties on June 26, 1998 and June 29, 1998 respectively. Both parties executed the current Memorandum of Agreement on or about September 1, 1998. Previously, in the October 14, 1994 publication of the *Texas Register* (19 TexReg 8229), the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons, the predecessor governmental body to the Texas Council, solicited public comment to a proposed agreement with Texas Industries for the Blind and Handicapped, Inc, the predecessor agency for TIBH. The agreement outlined the duties of both parties to administer the State Use program, as provided in Chapter 122, Texas Human Resources Code, and Texas Administrative Code,

TRD-9817527
Chester S. Beattie, Jr.
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Filed: November 13, 1998

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Texas State Board of Examiners of Psychologists

Notice of Hearing

The Texas State Board of Examiners of Psychologists will hold a public hearing on Tuesday, December 15, 1998, from 1:00 p.m. to 4:00 p.m. at 333 Guadalupe, Tower 2, Suite 2-225, Austin, Texas 78701.

In compliance with 22 TAC §466.13, the public hearing is to receive comments from interested parties concerning amended Board Rule §461.31 proposed under Texas Revised Civil Statutes, 4512c, which provides the Texas State Board of Examiners of Psychologists with the authority to promulgate and adopt rules consistent with the Act governing its administration. The proposed rule "Psychological Associate Advisory Committee (the PAAC)" 22 TAC §461.31 was published in the October 23, 1998, issue of the *Texas Register*. Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Texas State Board of Examiners of

Psychologists or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Texas State Board of Examiners of Psychologists reserves the right to restrict statements in terms of time or repetitive content. If you are unable to attend the hearing but wish to comment on the proposed rules, written comments will be accepted if mailed to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, or delivered to the receptionist at 333 Guadalupe, Suite 2-450, Austin, Texas 78701. All written and/or oral comments must be received by December 15, 1998. No comments will be accepted after that date. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible. Persons with disabilities who have special needs and who plan to attend the meeting should contact Brian L. Creath of the Texas State Board of Examiners of Psychologists at 512-305-7700.

TRD-9817505
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: November 12, 1998

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Texas Department of Transportation

Request for Qualifications

The Airport Sponsor listed below, through its agent, the Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Engineering Services pursuant to Chapter 2254, Subchapter A, of the Government Code. The Aviation Division of TxDOT will solicit and receive qualifications for professional engineering design services as described in the project scope for :

Airport Sponsor: County of Ochiltree and the City of Perrtyon; Perryton Ochiltree Airport; TxDOT Project Number: 9904PRYTN Project Scope: Repair the apron area at the Perryton Ochiltree Airport. A subsequent, additional project may be added next year. The new project scope may include design to extend and rehabilitate, stripe and mark RW 17-35; extend parallel TW to RW 17 end; rehabilitate parallel TW to RW 17-35; reconstruct hangar access TWs; expand apron; extend MIRL, RW 17-35; install REIL, RW 17-35; replace VASI with PAPI-4, RW 17-35; install segmented circle; and erosion/sedimentation controls. Project Manager: Alan Schmidt.

Interested firms which do not already have a copy of the Form 439, entitled "Aviation Consultant Services Questionnaire", (August 1995 version) may request one from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas, 78701-2483, Phone number: 1-800-68-PILOT (74568). The form is also available on high density 3 1/2" diskette in Microsoft Excel 5.0, and may be ordered from the above address with remittance of $2.50 to cover costs. The form may also be downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm. Download the file from the selection "Consultant Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

Two completed, unfolded copies of Form 439 (August 1995 version), must be postmarked by U. S. Mail by midnight December 9, 1998 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas, 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on December 11, 1998; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 11, 1998 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas, 78704. The three pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

The airport sponsor's duly appointed committee will review all professional qualifications and select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Historically Underutilized Business (HUB) participation on apron repair, Disadvantage Business Enterprise participation on the extended scope of services, design schedule, and other project matters, prior to the final selection process. The final consultant selection by the sponsor's committee will generally be made following the completion of review of proposals and/or consultant interviews. The airport sponsor reserves the right to reject any or all statements of qualifications, to conduct new professional services selection procedures, and to extend the contract for the additional scope of services.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-9817677
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: November 18, 1998

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Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §§52.1-52.8, concerning Environmental Review and Public Involvement, the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed new location highway/tollway project in Caldwell and Guadalupe Counties, Texas.

The TTA, in cooperation with the Federal Highway Administration (FHWA) will prepare an EIS on a proposal to construct the southern segment, Segment C, of State Highway 130. State Highway 130 - Segment C is proposed to extend from the intersection of US 183 and Farm-to-Market Road 1185 north of Lockhart in Caldwell County to Interstate Highway 10 near Seguin in Guadalupe County.

As currently envisioned, in its entirety State Highway 130 will extend from Interstate Highway 35 at State Highway 195 north of Georgetown in Williamson County, Texas, to IH 10 near Seguin in Guadalupe County, Texas. State Highway 130 will be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos, and New Braunfels. The total length of the proposed facility is approximately 143.5 kilometers (89 miles). The proposed State Highway 130 facility is being developed in three segments with each segment having logical termini and independent utility. FHWA and TTA will prepare an environmental impact statement for each of the three independent segments.

The length of Segment C, which is the subject of this NOI, varies depending on the alternative selected. The proposed action is intended to relieve congestion on Interstate Highway 35 by providing an

alternative route for those who commute between the metropolitan areas of Austin and San Antonio and surrounding areas, as well as drivers desiring to bypass Austin and other central Texas cities located along the heavily traveled Interstate Highway 35 corridor. The proposed action will also provide improved access and increased mobility to urbanized areas in the proposed corridor; help support planned business and residential growth in various areas throughout the project corridor; and provide needed freeway access from surrounding areas to the proposed Austin Bergstrom International Airport.

The proposed Segment C facility is being developed as a candidate toll road; thus, in conjunction with the EIS and selection of a preferred alternative, the TTA will conduct a toll feasibility study to evaluate the viability of developing the selected alternative as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments, will be evaluated for how well they meet the stated purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

The draft EIS for Segment C will address a build alternative including multiple alternative alignments. Alternatives to the proposed action, which will also be discussed in the EIS, will include: (1) taking no action, or the "no build" alternative, and (2) improving existing roadways in the project area. The build alternatives include multiple alternative alignments along new location and along existing highway rights-of-way within the Segment C project limits.

Impacts caused by the construction and operation of Segment C of State Highway 130 will vary according to the alternative alignment utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction and operation of the roadway; water quality impacts from construction activities and roadway stormwater runoff; impacts to waters of the United States, including wetlands, from right-of-way encroachment; and impacts to residences and businesses.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Public meetings for the Segment C project were held in Lockhart, Texas, and Seguin, Texas, in June and September, 1997. At these meetings, public comments on the proposed action and alternatives were requested.

In continuation of the scoping process for Segment C of State Highway 130, an additional set of public meetings has been scheduled. These meetings will be held on Wednesday, December 2, 1998, at the Seguin Coliseum, 810 South Guadalupe Street, Seguin, Texas, and on Tuesday, December 8, 1998, in the cafeteria of Plum Creek Elementary School 710 Flores Street, Lockhart, Texas. Two meetings are planned for the convenience of those wishing to attend. TTA, and its consultants, will present the same information at each meeting. From 6:00 to 7:00 p.m., displays showing the preliminary alternative corridors will be available for review. During this period, staff of the TTA will be available to answer questions. Beginning at 7:00 p.m., a formal presentation of the project will be made and will be followed by a public comment period. All interested persons are encouraged to attend one or both of these public meeting.

A public hearing will be held for the Segment C project subsequent to publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to proposed Segment C of State Highway 130 are addressed and all significant issues identified, comments and suggestions are invited from all parties.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 936-0983.

TRD-9817674
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: November 18, 1998

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University of Houston

Consultant Proposal Request

GENERAL INFORMATION

The University of Houston (UH), on behalf of its College of Optometry, intends to procure consultant services provided by Health Research Associates, Inc. (HRA) for the 1999 calendar year. The consulting services provided by HRA are a continuation of services previously provided by HRA to the College of Optometry.

DESCRIPTION OF REQUESTED SERVICES

HRA will provide consulting services to the College of Optometry that are pertinent to grant funding, primarily through the National Eye Institute. Grant funding from the National Eye Institute is essential to continuation of the research and teaching missions of the College. HRA will assist the College with all of the following: (a) evaluating research opportunities, (b) writing effective grant proposals, (c) obtaining information about funding sources, and (e) enhancing research funding for the College.

To obtain information about this consulting services arrangement, contact Roger Boltz, O.D., Ph.D., Associate Dean for Professional Studies, College of Optometry, University of Houston, Houston, Texas 77204-6052, or by e-mail, at boltz@uh.edu.

TRD-9817668
Peggy Cervanka
Executive Administrator
University of Houston
Filed: November 18, 1998

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